

SUGAR ACT, 1967

Date of commencement: 13th April, 1967.

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An Act to make further and better provision for the control of the sugar industry in Eswatini and for incidental and related matters.

Short title.

1. This Act may be cited as the Sugar Act, 1967.

Interpretation.

2. In this Act, unless the context otherwise requires —
 - “Agreement” means the Agreement referred to in section 6, as from time to time amended in accordance with the provisions of that Agreement and of this Act;
 - “association” means the association established under section 3;
 - “board” means the board referred to in section 8;
 - “by-product” means any substance other than sugar produced incidentally during the actual process of manufacturing sugar from sugar cane;
 - “constitution” means the constitution referred to in section 4, as from time to time amended in accordance with the provisions of that constitution;

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- “grower” means a person who produces sugar cane in Eswatini for the manufacture of sugar, and does not include a miller-cum-planter;
- “miller” means a person who operates a sugar mill in Eswatini for the production of centrifugal sugar;
- “miller-cum-planter” means a miller who is also registered as a quota grower under Schedule A to the Agreement;
- “Minister” means the Minister for Enterprise and Employment;
- “quota” means a permit or licence to grow sugar cane for the manufacture of sugar and to deliver in each year a specified tonnage of sucrose to be extracted therefrom;
- “refiner” means a person who converts raw sugar into refined or mill-white sugar, and includes a miller who converts raw sugar into refined or mill-white sugar;
- “sugar” means crystalline or liquid sucrose in any of its recognized commercial forms, derived from sugar cane and intended for human consumption;
- “sugar industry” means the sugar industry in Eswatini and includes the growing of sugar cane, the manufacturing and the refining of sugar and the marketing and disposal of sugar and its by-products within the provisions of the Agreement.

Association to be a body corporate.

3. There is hereby established a body corporate, to be known as the Eswatini Sugar Association, which shall be capable of suing and being sued in its corporate name and of performing all such acts as are prescribed from time to time in its constitution and as are necessary for, or incidental to, the carrying out of its functions under the Agreement and under this Act.

Constitution of the association.

4. The constitution of the association is set out in Schedule E to the Agreement.

[Amended A. 1/1967.]

Functions of the association.

5. The functions of the association under this Act are to regulate the sugar industry in terms of the Agreement; and to advise the Minister on any matters relating to the sugar industry.

[Amended A.1/1967.]

Agreement to be binding on all persons in sugar industry. (Schedule — Part I)

6. The Agreement, set out in Part I of the Schedule, together with all amendments thereto effected in accordance with this Act and published in the *Gazette*, shall be binding upon all millers, growers, millers-cum-planters, refiners, and other persons engaged in any aspect of the sugar industry.

[Amended A. 1/1967.]

Alteration of the Agreement. (Schedule — Part II)

7. Notwithstanding anything contained in the Agreement, a purported alteration or amendment of any of the clauses of the Agreement specified in Part II of the Schedule shall be of no effect unless it is made with the prior written consent of the Minister.

[Amended A.1/1967.]

Quota board.

8. (1) There shall be established a quota board as provided in Chapter III of the Agreement, and such board and the association shall have all such powers and perform such functions as are allocated or given to them under the Agreement.

(2) The High Court may review a proceeding of the board on the petition of any person aggrieved thereby if it appears to the court that —

(a) in the proceeding in question the board —

(i) exceeded its powers; or

(ii) failed to take into consideration matters relevant to the issues before it or otherwise failed to perform a duty; or

(iii) exercised its powers in an arbitrary, *mala fide* or grossly unreasonable manner; or

(iv) a point of law arose which the court should determine; or

(b) a person, who was disqualified from being a member, or, if a member, from taking part in the proceeding in question, whether in terms of the Agreement or otherwise, took part in the proceeding.

(3) Subject to sub-section (4), where, upon the consideration on review of a proceeding of the board, the court finds good grounds for review, it may —

(a) set aside the proceeding in question; and

(b) make such order as it considers fit, including an order that a special meeting of the board be convened for a rehearing, in accordance with the directions of the court, or for a reconsideration of the matter, or the taking of further evidence.

(4) A proceeding shall not be set aside —

(a) by reason of a formal or technical defect in a proceeding not, in the opinion of the court, resulting in substantial injustice; or

(b) in any other case, unless the court is satisfied that the matter proved caused, or was calculated to cause, substantial prejudice to the petitioner.

(5) On a petition under sub-section (2), the court may make such order as to costs as it deems just.

(6) A person whose quota rights are adversely affected by a decision of the board under the provisions of clauses 20, 21 or 22 of the Agreement may appeal to the High Court against such decision.

(7) On an appeal under sub-section (6), the court may —

(a) allow the appeal and set aside the decision of the board; or

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- (b) make such order as it considers just and equitable including an order that a special meeting of the board be convened for a rehearing, in accordance with the directions of the court, or for a reconsideration of their decision, or for the taking of further evidence; or

- (c) disallow the appeal in whole or in part;

and may make such order as to costs as it deems just.

(8) A petition for review under sub-section (2) and a notice of an appeal under sub-section (6) shall be filed in the High Court within fifteen days of the date on which the petitioner or the appellant, as the case may be, is notified of the decision of the board.

(9) Except as provided in this section, there shall be no review of, or appeal from, the proceedings of the board.

[Sub-s. (9) amended A.1/1967.]

Powers of Minister.

9. The Minister shall have all such powers and exercise all such functions as are given or reserved to him in terms of the Agreement.

[Amended A.1/1967.]

Evidence of change in agreement.

10. Proof of publication in the *Gazette* of any alteration or amendment to the Agreement shall be *prima facie* evidence that such alteration or amendment was properly effected and that all matters necessary therefor, or precedent, or incidental thereto, were duly complied with.

[Amended A.1/1967.]

Restrictions on cultivation of sugar cane and manufacture, refining, importing and exporting of sugar.

11. (1) No person shall grow or cultivate any sugar cane except in terms of a quota duly allocated or assigned to him in terms of the Agreement and to the extent permitted by the Agreement, or unless permitted by the Minister, after consultation with the association.

(2) No person shall engage in the manufacture of sugar except in terms of a milling licence allocated or assigned to him in terms of the Agreement and to the extent permitted by such milling licence and the Agreement.

(3) No person shall engage in the refining of sugar except as part of the process of the manufacture of sugar pursuant to a milling licence granted to him in terms of the Agreement or except in terms of, and to the extent permitted by a permit granted to him in terms of sub-section (4).

(4) The Minister may, on the advice of the Association, grant to any person permission in writing to refine sugar in such quantities and subject to such conditions as may be specified in the permission, and may, after due notice to the person affected, likewise cancel, vary or alter any such permission:

Provided that any permission so granted may, with the consent of the Minister but not otherwise, be assigned by the grantee thereof to any person.

(5) No person other than the association shall import any sugar manufactured outside Eswatini or export any sugar manufactured in Eswatini except in terms of, and to the extent permitted by, a permission granted to him in terms of sub-section (6).

(6) The Minister may, on the request of the association, grant to any other person permission in writing to import sugar manufactured outside Eswatini or to export sugar manufactured in Eswatini or any by-product of the manufacture of sugar in Eswatini, subject to such conditions as may be specified in the permission, and shall, on the like request, after due notice to the person affected, cancel, vary or alter any such permission:

Provided that any permission so granted may, with the consent of the Minister, but not otherwise, be assigned by the grantee to any person.

[Proviso amended A.1/1967.]

Power of Minister to prescribe sugar prices.

12. The Minister may, after consultation with the association, by notice in the *Gazette* —

- (a) prescribe the maximum wholesale or retail price at which any type or grade of sugar may be sold or disposed of, by any person in any place or area specified in the notice, for consumption in Eswatini, and may prescribe different prices for different classes of user;
- (b) amend or revoke any notice issued under this section.

Penalties.

13. (1) Any person who contravenes or attempts to contravene any prohibition imposed under section 11, or the terms of any conditions attached to a permission under section 11(4) or 11(6), or the provisions of any notice published by the Minister in terms of section 12, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months or to a fine not exceeding two hundred rand or to both such imprisonment and fine, and in the case of a continuing offence to an additional fine not exceeding ten rand for every day during which the offence continues.

(2) If any person is convicted of an offence referred to in sub-section (1), the court convicting him may enquire into and estimate the amount of profit made by him in consequence of his having committed such offence, and may, in addition to any sentence it may impose under sub-section (1), impose on the person so convicted a fine equal to the amount of the profit which the court so estimates he made in consequence of his having committed such offence.

(3) The court convicting a person of an offence under sub-section (1) may, if it thinks fit, declare any sugar or by-product produced at the trial of such person to be forfeited to the Government.

Responsibility of employers.

14. (1) Whenever the manager, agent or servant of any person (hereinafter called the employer) does or omits to do anything in contravention of this Act, such employer shall be deemed himself to have contravened any provision thereof and shall be liable on conviction to the penalties therefor unless he proves to the satisfaction of the court that —

- (a) in doing or omitting to do such thing such manager, agent or servant was acting without his knowledge or permission; and
- (b) all reasonable steps were taken by him to prevent any act or omission of the kind in question.

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(2) Whenever an employer is by virtue of the provisions of sub-section (1) liable for anything done or omitted by another person, the latter shall also be liable therefor as if he were the employer:

Provided that the provisions of this section shall not relieve such other person from any other liability which he shares with the employer.

Regulations.

15. (1) The Minister may, after consultation with the association, make regulations generally for the further and better carrying out of the purposes of this Act.

(2) The regulations made under this section may prescribe penalties for the contravention thereof not exceeding those mentioned in section 13(1).

Saving.

16. Any permission granted to any person under the repealed Control of Sugar Proclamation (*Cap. 162*) to grow or cultivate sugar cane or to manufacture sugar shall remain valid and in force until replaced by a quota or a milling licence, as the case may be, granted to that person in terms of the Agreement.

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[Section 6.]

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CHAPTER I
PRELIMINARY

Interpretation Clause.

1. In this Agreement and the Schedules hereto unless the context otherwise indicates —

“Big Bend Planters' Group” means the Group consisting of the members of the Eswatini Cane Growers' Association who supply sugar cane to the mill operated by Ubombo Ranches Limited, at Big Bend, Eswatini;

“by-product” means any substance other than sugar produced incidentally during the actual process of manufacturing sugar from sugar cane;

“cane” means sugar cane;

“the *Gazette*” means the Eswatini Government *Gazette*;

“grower” means a person who produces cane in Eswatini for the manufacture of sugar, and does not include a miller-cum-planter except —

- (a) in Chapter IV,
- (b) in Chapter VII (unless otherwise specified), and
- (c) where otherwise specified;

“Growers' Association” means the Eswatini Cane Growers' Association;

“Mhlume Planters' Group” means the Group consisting of the members of the Eswatini Cane Growers' Association who supply sugar cane to the mill operated by Mhlume (Eswatini) Sugar Company Limited, at Tshaneni, Eswatini;

“mill” means a sugar mill for the manufacture of sugar from cane;

“Mill Group Committee” means a committee of millers' and growers' representatives constituted in terms of Chapter V of this Agreement;

“miller” means a person who operates a sugar mill in Eswatini for the production of centrifugal sugar;

“Millers' Association” means the Eswatini Sugar Millers' Association;

“miller-cum-planter” means a miller who is also registered as a quota grower under Schedule “A” to this Agreement;

“mill-month” means a period of either four or five weeks, ending on a Saturday, determined by the Sugar Association;

“Minister” means the Minister for Enterprise and Employment;

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“northern sugar producing area” means the area supplying cane to the mill operated by Mhlume (Eswatini) Sugar Company Limited, and includes the said mill;

“quota” means a permit or licence to grow cane for the manufacture of sugar and to deliver in each year a specified tonnage of sucrose to be extracted therefrom;

“Quota Board” means the Eswatini Sugar Industry Quota Board established in terms of Chapter III of this Agreement;

“refiner” means a person who converts raw sugar into refined or mill-white sugar, and includes a miller who converts raw sugar into refined or mill-white sugar;

“season” means the period or periods in each year during which a mill is receiving and crushing growers’ Schedule “A” and/or Schedule “D” quota cane as determined under Clause 35;

“southern sugar producing area” means the area supplying cane to the mill operated by Ubombo Ranches Limited, and includes the said mill;

“sugar” means crystalline or liquid sucrose in any of its recognised commercial forms, derived from sugar cane and intended for human consumption;

“Sugar Association” means the Eswatini Sugar Association, the present Constitution of which is Schedule “E” to this Agreement;

“Sugar Industry” and “the Industry” means the sugar industry in Eswatini and includes the growing of cane, the manufacturing and the refining of sugar and the marketing and disposal of sugar and its by-products within the provisions of this Agreement;

“ton” means a short ton of 2,000 lbs;

“year” means the period of twelve calendar months ending on the 30th day of April, or such other period of twelve months as may from time to time be fixed by the Sugar Association;

words denoting the singular shall include the plural, words denoting the plural shall include the singular and references to persons shall include companies and associations or bodies of persons, corporate or incorporate.

Date of coming into operation of Agreement.

2. This Agreement shall come into operation —

- (a) when it has been signed or otherwise approved by millers and growers (including miller-cum-planters) engaged in the production of cane in Eswatini who have together produced not less than 90% (ninety per centum) of the total weight of sucrose delivered to mills in Eswatini during the preceding year, and
- (b) on the date on which it is brought into force by legislation.

Amendments to Agreement, date of coming into operation of amendments, and binding effect thereof on all persons engaged in the Industry.

3. (1) Subject to the provisions of the Sugar Act, 1967, this Agreement may be altered or amended from time to time, and any alteration or amendment shall be effected by the adoption thereof by a resolution of the Sugar Association in General Meeting: provided however that if the Minister shall require any particular alteration or amendment to be approved both by a resolution of the Sugar Association in General Meeting and by separate resolutions passed at General Meetings of the Millers' Association and the Cane Growers' Association respectively, such alteration or amendment shall not become effective unless and until it has been so approved.

(2) All duly effected alterations or amendments to this Agreement shall be published in the *Gazette* and upon such publication such alteration or amendment shall become binding upon all millers, growers, miller-cum-planters, refiners and other persons who are then or who may thereafter become engaged in any aspect of the Sugar Industry to the extent that its provisions affect their operations in the Industry.

Permitted Departures from the Agreement.

4. Subject to the provisions of the Sugar Act, 1967, and notwithstanding anything to the contrary elsewhere herein contained, it shall always be competent for the Sugar Association in General Meeting, to authorise a departure from this Agreement but only until such time as a new alteration or amendment incorporating such a departure has been published in the *Gazette* which shall be as soon as practicable after the said departure has been authorised.

Acceptance of this Agreement deemed to be a condition of every milling licence and every quota.

5. It shall be deemed to be a condition of every sugar milling licence issued and every quota granted in Eswatini that the holder thereof shall be bound by this Agreement and any alterations or amendments hereto which may from time to time be in force as if such holder had personally signed or accepted this Agreement and any such alterations or amendments.

CHAPTER II ESWATINI SUGAR ASSOCIATION

Eswatini Sugar Association to regulate the Industry.

6. The Eswatini Sugar Association, the Constitution of which is set out in Schedule "E" to this Agreement, shall regulate the affairs of the Industry by exercising all such rights and performing all such functions as are given to it under this Agreement.

CHAPTER III ESWATINI SUGAR INDUSTRY QUOTA BOARD

Establishment of Quota Board.

7. As from the date when this Agreement comes into operation there shall be established a board to be known as the Eswatini Sugar Industry Quota Board (hereinafter referred to as "the Quota Board").

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Membership of Quota Board, and Chairman and Secretary.

8. (1) The Quota Board shall consist of eight members, namely a Chairman, two growers' representatives, two millers' representatives and three other members, all of whom shall be formally appointed by the Sugar Association on the under-mentioned nominations and shall be entitled to receive such remuneration and to be reimbursed for such expenses as the Sugar Association may from time to time determine: Provided however that should a third mill be granted a permanent licence the membership of the Quota Board shall be amended so as to give the new sugar producing area representation on the Board but in such a manner as to maintain the proportion of voting of the industry representation.

(2) The Chairman shall be an independent person, having no financial interest in the Industry and not being in the employ of the Eswatini Government, who shall be nominated by the Sugar Association and approved by the Minister: Provided however that if the Minister shall fail within one month of being so requested to approve the appointment of either of two successive nominees proposed by the Sugar Association, the Association shall be entitled to appoint a third person without such approval.

(3) The Growers' Association shall nominate two members, one of whom shall be representative of the northern sugar producing area and the other of whom shall be representative of the southern sugar producing area.

(4) The Millers' Association shall nominate two members, one of whom shall be representative of the northern sugar producing area and the other of whom shall be representative of the southern sugar producing area.

(5) The Minister shall nominate two members, having no financial interest in the Industry.

(6) The remaining member, who shall also have no financial interest in the Industry shall be nominated by the Minister after consultation with the Sugar Association.

(7) The appointments of the members of the Quota Board shall be for a period of three years, but the persons or Associations required to nominate the Chairman and members of the Quota Board shall be entitled at any time by written notice to the Sugar Association to request cancellation of the appointment of the Chairman or members nominated by them, and this shall be done. The persons or Associations concerned shall be required to nominate a new Chairman or a new member to replace those removed from their appointments; or to fill any vacancy caused by any Chairman or member nominated by them resigning or otherwise ceasing to hold office, and on any such nomination being made the Sugar Association shall make a new appointment so long as the requirements as for the appointment of the original member have been complied with.

(8) If at any time the Chairman of the Quota Board is for any reason prevented from attending any meeting of the Quota Board the Sugar Association may, with the approval of the Minister, appoint some other independent person to act as Chairman for that meeting. Whilst so acting such other person shall have all the powers and duties of, and shall be deemed to be the Chairman.

(9) The persons or Associations required to nominate the members of the Quota Board shall nominate alternates to those members to act in their stead during their absence or inability to attend meetings of the Quota Board. The Sugar Association shall formally appoint such alternates on such nominations, and such alternates, while acting in the place of the members whose alternates they are, shall have all the powers and duties of such members.

(10) The Secretary of the Sugar Association shall act also as the Secretary of the Quota Board, and shall be responsible for the keeping of the records of the Quota Board and for the carrying out of such further duties as the Quota Board may from time to time assign to him in terms of Clause 10(4) of this Agreement.

Functions, Powers and Duties of the Quota Board.

9. The Quota Board shall have authority —

- (a) to undertake and carry out all such duties and functions and to exercise all such powers as are given to it under this Agreement;
- (b) to conduct such investigations and enquiries as it may from time to time deem necessary or desirable for the better carrying out of its functions under this Agreement;
- (c) to take such decisions with respect to matters within its jurisdiction and to give such notifications or directions as it may deem necessary or expedient to give due effect thereto, or for the carrying out of any provision of this Agreement affecting the Quota Board;
- (d) to call in or to employ to assist it in its deliberations and for any other advisory purposes, technical or otherwise, such persons as it may deem fit, and to remunerate such persons where appropriate as it may determine;
- (e) to employ, at such remuneration and on such conditions as it may in consultation with the Sugar Association determine, such persons as it may consider necessary or expedient to enable it to carry out its functions and duties;
- (f) to acquire or hire such movable property as it may consider necessary for the purpose of carrying out its functions and duties, and to hold, dispose of or let any such property; and
- (g) generally to do all such other acts and things as may be incidental to the proper carrying out of the functions and duties given to it by this Agreement.

Proceedings of the Quota Board.

10. (1) No business shall be transacted at any meeting of the Quota Board unless a quorum is present. Six members or alternates shall constitute a quorum, provided that one grower representative and one miller representative or their alternates are included therein. In the event that a quorum is not present within 60 minutes of the appointed time of a meeting of the Quota Board the meeting shall be adjourned forthwith to the same hour and place seven days later. At the subsequent meeting the Chairman may, at his sole discretion, declare that a quorum is present notwithstanding that less than six members or alternates are presents.

(2) Whenever the Quota Board has to consider an application for a quota from a particular sugar producing area, or any other matter which affects only a particular sugar producing area, the Chairman shall be empowered (but shall not be obliged) in his discretion to rule that the miller and grower representatives from that area shall not take part in the proceedings, and that the miller and grower representatives from the other sugar producing area shall accordingly be the only millers' and growers' representatives to take part.

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(3) At meetings of the Quota Board each member shall have one vote and all questions coming before the Quota Board for decision shall be decided by a simple majority of votes: Provided however that if both grower or both miller representatives shall be present they shall each have only half a vote, and provided further that if the votes shall be evenly divided the Chairman shall have a casting vote in addition to his deliberative vote.

(4) Subject to the provisions of sub-clauses (1), (2) and (3) above, the Quota Board may make such rules and regulations, not in conflict with any of the provisions of this Agreement, as it may deem necessary or expedient for the purpose of —

- (a) prescribing the meetings to be held by the Quota Board, the conduct of the proceedings and business thereat and the records to be kept of its proceedings; and
- (b) generally for the better carrying out of the provisions of this Agreement in so far as they relate to the Quota Board.

Quota Board expenses.

11. The remuneration and reimbursement of expenses of the members of the Quota Board, as determined by the Sugar Association pursuant to Clause 8(1) of this Agreement, and all reasonable costs and expenses incurred by the Quota Board in the discharge of its functions pursuant to this Agreement, shall be Industry Obligations as defined in Clause 53 of this Agreement, and shall be paid by the Sugar Association in terms of Clause 54 of this Agreement.

CHAPTER IV

CONTROL OF PRODUCTION

Control of varieties of cane to be planted.

12. (1) Only such varieties of cane as are listed in Schedule “B” to this Agreement as varieties approved by the Sugar Association for cultivation in Eswatini may be planted and grown by growers.

(2) In the event that the Council of the Sugar Association, after thorough investigation of all relevant circumstances and after consultation with the Director of Agriculture and other suitably qualified persons, decides that any field or fields or variety or varieties of cane constitute a danger to the Industry in regard to pests, disease or otherwise, it shall be entitled to require the relevant grower to take out any such field or fields or variety or varieties of cane provided that:

- (i) The Sugar Association shall advise the relevant grower in writing of the decision of the Council within a period of fourteen (14) days of the date of the decision having been made and in the said notice grant the relevant grower the right to appear before the Council on a date which shall be not less than fourteen (14) days after receipt of the aforementioned notice by the relevant

grower to enable the relevant grower to show cause why he should not take out the field or fields or variety or varieties of cane stipulated in the notice to him.

- (ii) In the event of the relevant grower appearing before the Council to show cause as aforesaid, the Sugar Association shall advise the relevant grower of the final decision of the Council within a period of fourteen (14) days of the date of such hearing. In the event that the final decision of the Council is to the effect that the grower shall take out the relevant field or fields or variety or varieties of cane, then in that event the relevant grower shall take out the relevant field or fields or variety or varieties of cane within a period of sixty (60) days of his receipt of the notice envisaged in this sub-clause 12(2)(ii).
- (iii) In the event of the relevant grower failing to appear before the Council, the relevant grower shall take out the relevant field or fields or variety or varieties of cane within a period of sixty (60) days after receipt of the notice given to him in terms of clause 12(2)(i).

[Amended G.N. 65/1999.]

(3) In the event of the relevant grower failing to take out the relevant field or fields or variety or varieties of cane as set out in the notice/s in terms of clauses 12(2)(i) and/or 12(2)(ii) above within the time limits set out in clauses 12(2)(ii) and/or (iii) above, the Sugar Association shall be entitled to instruct, in writing, the Miller to whom the relevant grower is attached, to reject all and any deliveries of any cane of whatsoever nature or from whatsoever origin from the relevant grower until the Miller is advised in writing by the Sugar Association that the relevant grower has complied with the directive of the Council of the Sugar Association and has taken out the relevant field or fields or variety or varieties of cane which he has been directed to do. The Miller shall, upon receipt of such notice from the Sugar Association, abide by the instruction of the Sugar Association to accept deliveries after compliance with the directive of the Council of the Sugar Association by the relevant grower and the grower shall not have any claim of whatsoever nature against the Miller concerned.

[Added G.N. 65/1999.]

(4) Any notice as referred to in 12(2) and 12(3) above shall be deemed to have been properly given if dispatched to the last known post office box number of the relevant grower by pre-paid registered mail and shall be deemed to have been properly received by the relevant grower on the fourteenth (14th) business day after the postage thereof as aforesaid.

[Added G.N. 65/1999.]

(5) Nothing in this clause shall prevent the Sugar Association, either on its own behalf or in conjunction with individual growers, from carrying out experiments with new cane varieties and authorising limited controlled growing, cultivation and harvesting of experimental varieties of cane.

[Sub-s. (5) renumbered G.N. 65/1999.]

(6) The Sugar Association shall have the right to amend Schedule "B" to this Agreement from time to time by deleting any variety of cane therefrom and/or by adding thereto such additional varieties of cane as it may approve for cultivation in Eswatini. All such amendments shall be published in the *Gazette*.

[Sub-s. (6) renumbered G.N. 65/1999.]

[ISSUE 1]

Allocation of initial quotas.

13. On this Agreement coming into force the Quota Board shall allocate initial quotas to growers as follows:

(1) In the case of every grower holding a current growing permit issued by Her Majesty's Commissioner under the Eswatini Control of Sugar Act, 1957 — an initial total quota which shall be equal to the currently existing quota granted to such grower by Her Majesty's Commissioner under such permit.

(2) In the case of every such grower who produces to the Quota Board figures verified by his Mill Group Committee for his cane deliveries as may be required by the Board —

- (i) (a) where a grower held the same sucrose quota in terms of his sugar cane growing permit for the 1965/66 and 1966/67 seasons, an initial basic quota equal to the highest average seasons' delivery for any two consecutive seasons, which may be equal to, but may not exceed, his initial total quota; alternatively
- (b) where a grower held a sucrose quota in terms of his sugar cane growing permit for the 1966/67 season only, or held a sucrose quota for the 1966/67 season which differed from that which he held for the 1965/66 season, an initial basic quota equal to the higher of his seasons' deliveries for 1965/66 or 1966/67, which may be equal to, but may not exceed, his initial quota;

- (ii) an initial contingency quota (if any) which shall be equal to the amount by which his initial basic quota shall fall short of his initial total quota.

[Sub-para. (ii) amended G.N. 114/1967.]

(3) In the case of every other such grower an initial contingency quota which shall be equal to the grower's initial total quota.

(4) Notwithstanding the foregoing the special quota of 1,000 tons of Schedule "A" and 200 tons of Schedule "D" quota issued in August 1966 to Ubombo Ranches Limited on the understanding that the whole or part of this special quota totalling 1,200 tons may be withdrawn for issue to other growers for production as from the 1969/70 season, shall be referred to the Quota Board for allocation to such growers or potential growers as it thinks fit.

Conversion of contingency quotas into basic quotas by performance.

14. The Quota Board shall grant basic quotas to growers, and increase basic quotas allocated to growers, as follows:—

(1) In the case of a grower whose total quota is made up of a basic quota plus a contingency quota, his basic quota shall be increased at the end of each year by the amount by which his delivery of sucrose in such year plus his delivery in the previous year, divided by two, exceeds his existing basic quota, and such increase shall be deducted from his contingency quota: Provided that his basic quota shall not be so increased to a greater amount than his total quota.

(2) In the case of a grower whose total quota is made up of a contingency quota only, he shall be granted a basic quota, at the end of the first year after the allocation to him of such contingency quota, which shall be equal to one-half of his delivery of sucrose to the mill

during that year, and such basic quota shall then be deducted from his contingency quota. In the following and subsequent years the provisions of sub-clause (1) above shall apply to such grower.

(3) If in respect of any year measures for the restriction of production should be brought into force in terms of Clause 28 below, and if any grower should thereby be prevented from having his contingency quota or any part thereof converted by performance into a basic quota pursuant to the provisions of sub-clause (1) or (2) above, the Quota Board may nevertheless with effect from the commencement of the next succeeding season convert such portion of his contingency quota into a basic quota as would in the opinion of the Board have been so converted in terms of sub-clauses (1) or (2) above had no measures for the restriction of production been in force; provided however that the Quota Board shall first satisfy itself that the acreage of land planted to cane by the grower at the beginning of the year in which measures for the restriction of production are in force is sufficient to justify such conversion.

(4) Every Mill Group Committee shall forthwith at the end of each season advise the Quota Board of the total deliveries of cane and sucrose made to its mill during such season by every grower attached thereto, and the Quota Board shall as soon as possible after receiving the said information make such adjustments to the growers' quotas as are required to give effect to this clause.

(5) All adjustments of quotas in terms of this clause shall come into effect from the commencement of the year following the year in which the deliveries on which the adjustment was calculated were made.

Allocation of increased quotas for existing growers and new quotas for additional growers.

15. (1) The Sugar Association may from time to time and when it deems fit decide that it would be justifiable for increased quotas to be offered to existing growers and/or for new quotas to be offered to additional growers by the Quota Board provided that before authorising such increases to any existing growers or the granting of any new quota, the Sugar Association must be satisfied:

- (a) that the future available markets for sugar produced in Eswatini are adequate to accommodate at satisfactory prices the further expansion of production which will result from the granting of the increased or new quotas;
- (b) that milling capacity to accommodate the extra production resulting from such increased quotas and/or new quotas is available or will be made available by the millers at the mills.

(2) On being notified of the decision to increase production, the Quota Board shall publish its intention to receive applications from existing growers for an increased quota and/or from persons desirous of obtaining a quota.

(3) The Quota Board shall then as it deems fit —

- (a) on the application of any existing grower whose average delivery against his Schedule "A" quotas in two successive years has in consequence of his having taken up shortfalls of other growers in terms of Clause 37 exceeded his total quota, increase such grower's basic and total quota by the whole or part of such excess; and/or

- (b) on the application of any existing grower who wishes to increase his production of cane, grant him a contingency quota or increase his contingency quota, as the case may require (thereby also increasing his total quota); and/or
- (c) on the application of any person who wishes to be attached to an existing mill as a new or additional grower, allocate to such applicant a new quota, which shall in the first instance be a contingency quota only:

Provided that before increasing the quota of any existing grower or granting any new quota the Quota Board shall first satisfy itself —

- (d) that the suitability of the proposed land for additional cane production, the availability of water and the transport costs from the land to the mill are sufficiently favourable to ensure economic production;
- (e) that the applicant for the increased or new quota has or has available to him the necessary finance and expertise.

(4) Any increased or new quotas allocated in terms of this Clause shall come into effect from the beginning of May next succeeding the grant of the quota.

Keeping of record in form of Schedule "A".

16. The Quota Board shall keep, in the form of Schedule "A" to this Agreement, a record of all initial quotas allocated by it in terms of Clause 13 and 24(2) hereof, and all adjustments, alterations, additions, reductions, transfers or cancellations made in respect thereof from time to time. Such record shall be known as Schedule "A", and the quotas therein recorded shall be known as "Schedule A quotas". Copies of the said Schedule "A" as first compiled, and thereafter as revised at the commencement of each season, shall be circulated by the Quota Board as soon as possible to the Sugar Association, the Growers' Association, the Millers' Association and all Mill Group Committees for the information of growers attached to their mills. The Quota Board shall furthermore advise each grower by letter of the quota or quotas allocated to him and of any alterations or adjustments made thereto from time to time.

Schedule "D" Quotas.

17. (1) In addition to the Schedule "A" quotas provided for in this Agreement, there shall be established a further class of quotas to be known as "Schedule D quotas". The purpose of the Schedule "D" quotas shall be to reserve future Schedule "A" quotas totalling eleven thousand tons of sucrose for issue to Eswatini growers; but until such time as sufficient suitable Eswatini applicants have been allocated Schedule "A" quotas by the Quota Board, Schedule "D" quotas may be temporarily allocated in lieu thereof to existing holders of Schedule "A" quotas who are willing to accept the same on such temporary basis.

(2) On this Agreement coming into force the Quota Board shall, in the case of every grower holding a currently existing trustee quota issued by Her Majesty's Commissioner under the Eswatini Control of Sugar Proclamation (*Cap.* 162) allocate to such grower a Schedule "D" quota which shall be equal to such trustee quota.

[Sub-s. (2) amended G.N. 114/1967.]

(3) As soon as possible after the end of each season the Quota Board shall recalculate and re-allocate the Schedule "D" quotas, by reducing the total thereof by the total amount of Schedule "A" quotas granted to Eswatini growers during the year and then re-allocating the reduced total after taking into account whether Schedule "D" quota holders have met their commitments in the preceding year.

(4) The Quota Board shall keep, in the form of Schedule "D" to this Agreement, a record of all Schedule "D" quotas allocated by it in terms of this clause, and of all adjustments, alterations, additions, reductions, transfers or cancellations made in respect thereof from time to time. Such record shall be known as "Schedule D". Copies of the said Schedule "D" as first compiled and as thereafter revised at the commencement of each season shall be circulated by the Quota Board as soon as possible to the Sugar Association, the Growers' Association, the Millers' Association and all Mill Group Committees for the information of growers attached to their mills. The Quota Board shall further advise each grower by letter of the Schedule "D" Quota allocated to him and of any alterations or adjustments made thereto from time to time.

(5) Holders of Schedule "D" quotas who have either fully or partly performed such a quota, and who have thereafter partly or wholly lost the same through the application of sub-clause (3) above shall have preferential consideration by the Quota Board to the extent to which they had so performed for the allocation of increased quotas under Clause 15 above.

(6) In addition to the total of 11,000 tons of sucrose reserved for issue to Eswatini growers under the provisions of clause 17(1) above, there shall be reserved a further 6,000 tons of sucrose for future issue as Schedule "A" quotas to Eswatini growers. This amount shall not be issued to Eswatini growers until the 11,000 tons provided under clause 17(1) has been issued in full, and shall be provided for by the pro rata reduction of all Schedule "A" quotas, with the exception of those Schedule "A" quotas which have been awarded to Eswatini growers in place of Schedule "D" quotas in accordance with the provisions of this clause, unless it is possible to provide for the issue of this additional tonnage under the provisions of clause 15 governing the issue of new quotas.

(7) For the purpose of giving effect to the provisions of this clause concerning allocation to suitable Eswatini applicants, the Quota Board may allocate Schedule "A" quotas for such amounts as it may decide to such Eswatini applicants as may apply from time to time up to the total quota of sucrose set aside or remaining set aside for that purpose from time to time in terms hereof; provided that before allocating or granting any such quota the Quota Board shall first satisfy itself in terms of sub-clause (d) and (e) of Clause 15 hereof relative to the applicant concerned. Any such quota shall come into effect from the beginning of May next succeeding the grant of the quota.

Transfer of quotas, and related matters.

18. (1) The allocation of a quota to a Grower shall be regarded as attaching only to the land in respect of which his application for the quota was made and in respect only of the mill to which he is attached in Schedule "A".

(2) No alteration in the terms of such allocation, either as regards the Grower, the land in respect of which the quota applies or the mill to which the Grower is attached in Schedule "A" shall be made without the written consent of the Quota Board:

[ISSUE 1]

Provided that —

- (a) the Quota Board shall, on being notified by a Grower that he has sold or otherwise disposed of the land or part thereof or alienated his right of use thereof in respect of which his quota applies, to another person, transfer his quota or part thereof, to such other person subject to the Quota Board being satisfied that such other person has acquired freehold or leasehold title to the land, or part thereof, or has acquired the right of use thereof in respect of which the Quota applies;
- (b) the Quota Board shall not consent to the transfer of any Grower from one mill to another without the prior consent of the Sugar Association and the two millers concerned;
- (c) any change of the land in respect of which the quota applies by way of substitution of other land held by the Grower shall be permitted by the Quota Board, subject to the Quota Board being satisfied that such other land is suitable land for cane growing, that it is a reasonable and *bona fide* substitution of land to take the place of the abandoned or to be abandoned quota land and that it will not result in the increase of an existing quota held in respect of other land by the same or any other Grower.

Rights and obligations of growers on allocation of quotas to them.

19. The allocation by the Quota Board to any grower of any quota in terms of this Agreement shall entitle and oblige such grower, unless prevented by Act of God, force majeure, fire, frost, floods, strikes or circumstances over which he has no control, to deliver in each season to the mill to which he is attached and in respect of which such quota applies sufficient cane to perform such quota in full, save as may be otherwise provided elsewhere in this Agreement.

Reduction of basic quotas on failure to fulfil them.

20. (1) If a grower shall for two consecutive years fail to perform his basic quota in full, the Quota Board shall be entitled with effect from the immediately succeeding year, to reduce such basic quota by the amount of the deficiency between such basic quota and the higher average delivery for any two consecutive years of the last three: Provided however that —

- (a) the Quota Board shall not make any such reduction without first affording the grower concerned an opportunity at a hearing before it of showing cause why it should not do so, and no such reduction shall be made if the grower's failure to perform was due to Act of God, force majeure, fire, frost, flood, strikes or circumstances over which he had no control;
- (b) growers' deliveries shall be deemed to be made firstly in performance of any basic quotas allocated to them in Schedule "A", and any deficiency between a grower's actual deliveries and the total of his Schedule "A" and "D" quotas shall accordingly be deemed to be firstly a deficiency in respect of any Schedule "D" quota held by him, and a deficiency in respect of his Schedule "A" quota only to the extent (if any) that the deficiency exceeds the amount of such Schedule "D" quota.

(2) If any grower whose basic quota has been reduced in terms of sub-clause (1) above should with the written consent of the Quota Board given in terms of Clause 18(2) dispose of any quota which has been so reduced, the reduction therein shall be applied —

- (a) where his successor acquires the whole of his quota, against that successor,
- (b) where two or more persons purchase between them such grower's quota, against each such person *pro rata* to the portion of the quota purchased by him, or
- (c) where such grower disposes of a portion of his quota and retains the balance thereof, against such grower and his successor *pro rata* to the portion of the quota retained by such grower and the portion acquired by his successor, respectively.

Cancellation of contingency quotas not converted into basic quotas in four years.

21. At the commencement of each year the Quota Board shall cancel and withdraw any contingency quota which has been in existence for at least four years and has not yet been converted into a basic quota:

Provided that —

- (a) for initial contingency quotas allocated in terms of Clause 13(2)(ii), the period of four years mentioned may be reduced at the discretion of the Quota Board;
- (b) before any such cancellation and withdrawal is effected the grower concerned shall be given an opportunity of appearing before the Quota Board and showing cause why his contingency quota should not be so cancelled and withdrawn; and
- (c) the Quota Board shall be entitled to waive or defer any such cancellation, or to reinstate in whole or in part any contingency quota that has been cancelled, either unconditionally or upon such conditions as it may deem fit, if it shall be reasonably satisfied by the grower concerned that there have been exceptional causes beyond his control for his failure to convert his contingency quota, or part thereof as the case may be, into a basic quota within such four-year period.

Review of growers' quotas by Quota Board.

22. As soon as possible after receiving the advices of the Mill Group Committee of the total deliveries of cane and sucrose in a season, as specified in Clause 14(4), the Quota Board shall review the position of all growers who have not met their Schedule "A" plus Schedule "D" (if any) quotas in the light of the provisions in Clause 17 and Clauses 20 and 21 of this Agreement. The Quota Board may then reduce a Grower's quota to the extent of his shortfall by applying it, firstly, against his Schedule "D" quota (if any) and thereafter, to his Contingency and, thereafter, to his Basic Quota in so far as may be necessary and shall then re-allocate such shortfall to other growers who have applied for additional quotas either as Schedule "D" or Contingency Quotas as the case may be.

[ISSUE 1]

Permanent milling licences for existing permit holders, and rights and obligations of millers.

23. (1) On this Agreement coming into force the Quota Board shall issue a permanent licence to manufacture sugar to every miller holding an existing permit to manufacture sugar issued by the Minister under the Eswatini Control of Sugar Act 1957.

(2) Every such miller undertakes that unless prevented by Act of God, force majeure, fire, flood, strikes, or circumstances over which he has no control, he will during his season in each year accept for manufacture into sugar all the cane which growers listed in Schedule "A" as attached to his mill, and other growers whose cane has been diverted or assigned to his mill in terms of this Agreement, shall deliver to his mill in terms of this Agreement:

Provided however that the miller shall not without his prior agreement be under any obligation to accept cane for milling —

- (a) which is delivered by any grower attached to his mill in excess of the total of his Schedule "A" and "D" quotas, plus any shortfall that may be allocated to him in terms of Clause 37 below,
- (b) which is delivered by any grower not listed in Schedule "A" as attached to his mill, or
- (c) which he is entitled to reject in terms of Clauses 43(1), 43(3) or 44(1) of this Agreement.

New milling licences for new producing areas.

24. (1) If any application shall be made for the opening up of a new area for sugar production the Quota Board shall invite and consider applications for a new milling licence and for new quotas for growers to be attached to the proposed new mill. No such new milling licence and new growers' quotas may be issued by the Quota Board unless and until —

- (a) the Quota Board has satisfied itself —
 - (i) after consultation with the Sugar Association, that the future available markets for sugar produced in Eswatini are likely to be sufficient to accommodate economically the further expansion in production which will result from the granting of the new licence;
 - (ii) that the project for the new mill and new growing area is economically sound and will not prejudice the economy of the existing Industry;
 - (iii) that sufficient cane can be produced in the area of and within an economic distance from the proposed new mill site to enable the proposed production of sugar to be achieved;
 - (iv) that the applicant for a new milling licence has or has available to him the necessary finance and expertise to establish and operate a sugar mill; and
 - (v) on any aspect it may consider relevant;
- (b) the opening up of the new area for sugar production and the issue of a new milling licence has been approved by the Minister.

(2) If on any application for a new milling licence the Quota Board has satisfied itself on the matters referred to in sub-clause (1)(a) above, it shall advise the Minister of its views and recommendations and request a decision. Upon receipt of a decision from the Minister that a new milling licence should be granted, the Quota Board shall issue to the respective applicants therefor a provisional milling licence and initial growers' quotas, which shall in the first instance be contingency quotas only and shall be governed by all the provisions of this Agreement respecting contingency quotas. If and when the Quota Board is satisfied that sufficient quotas have been issued to growers to enable a minimum economic level of sugar production to be achieved by the new mill, it shall issue a permanent licence in place of the provisional licence. If however the Quota Board shall at any time be of the opinion that the quotas issued to growers attached to the new mill are not sufficient to achieve a minimum economic level of sugar production, and that it is unlikely that the necessary further quotas to achieve a minimum economic level will be issued, the Quota Board may, with the prior approval of the Sugar Association and the Minister cancel and withdraw the provisional milling licence and the growers' quotas associated therewith.

(3) On the issue of any provisional or permanent milling licence in terms of this clause the holder shall be entitled to all the rights and be subject to all the obligations of a miller under this Agreement, including especially the obligations of a miller referred to in sub-clause (2) of Clause 23 and in Clause 43 of this Agreement.

Transfer of milling licences.

25. The issue of a milling licence to any miller shall be personal to that miller and shall accordingly not be capable of being transferred or leased except with the prior consent of the Quota Board, which shall not be unreasonably withheld.

Determination whether production should be restricted in any year.

26. Immediately prior to the commencement of each year the Sugar Association shall —

- (a) obtain from every Mill Group Committee an estimate of the quantity of sugar that its mill will be able to produce during the forthcoming year from deliveries of cane from growers attached to the mill;
- (b) obtain from its Marketing Executive Committee an estimate of the maximum total quantity of Eswatini sugar that can be disposed of on all available markets during the forthcoming year, and the anticipated prices that will be obtainable for Eswatini sugar sold during such year;
- (c) on the basis of the estimates so obtained the Association shall in respect of every year examine whether or not production should be restricted during the forthcoming year. If in respect of any year the Sugar Association shall be of the opinion that, after allowing for such adjustment of unsold stocks held as it may consider desirable, the maximum total quantity of Eswatini sugar that it will be able to market beneficially will be less than the total quantity of sugar that can be produced pursuant to growers' Schedule "A" and "D" quotas, it may direct that sugar production for such year shall be restricted and may apply cuts to growers' quotas in terms of Clause 28 below.

[ISSUE 1]

Fixing of level of production.

27. (1) If in respect of any year the Sugar Association shall decide that it is not necessary to restrict production, it shall determine the total quantity of sugar to be produced during such year in accordance with its estimate of the total quantity of sugar that will be produced pursuant to the Schedule “A” and “D” quotas of all growers or estimates obtained by it in terms of Clause 26(1).

(2) If in any year the aforesaid estimates are in excess of the total of Schedule “A” and “D” quotas of Eswatini as a whole then the Association shall unanimously decide:

- (a) that the consequent surplus sugar shall be included in the production determined under sub-clause (1) above as therein provided, or
- (b) that surplus sugar shall be produced only on a segregated basis marketed at ruling world prices for account of those concerned subject to such conditions as the Association may specify, or
- (c) that it would be contrary to the interests of the industry that any surplus sugar be produced and in such event it shall not be produced.

Application of cuts to Schedule “A” and “D” quotas in the event of restriction of production.

28. (1) If in respect of any year the Sugar Association shall decide that production of sugar shall be restricted, it may limit the total production of sugar to the amount which it considers can be beneficially marketed (after allowing for such adjustment in unsold stocks held as it considers desirable) by applying such cuts to the quotas of every grower in terms of sub-clause (2) below for such year as it considers necessary to achieve such limitation.

(2) Any cuts decided upon by the Sugar Association in terms of sub-clause (1) above shall be applied to each grower by reducing the tonnage of sucrose he is authorised to deliver in such year in terms of his Schedule “A” and “D” quotas by such proportion of the total cut decided upon as such growers’ Schedule “A” and “D” quotas bear to the total Schedule “A” and “D” quotas:

Provided that —

- (a) the cuts shall be applied to each grower’s Schedule “D” quota in preference to his Schedule “A” quota and to his contingency quota in preference to his basic quota, and
- (b) in order to avoid undue hardship to small growers having a total quota of 500 (five hundred) tons or less the cut to be applied to the quota of each such small grower, as determined above, shall be adjusted by multiplying the same by the formula —

$$\frac{\text{grower's quota} - 250}{250}$$

250

Determination of types of sugar to be produced, and quantity of each type.

29. (1) The Association shall from time to time determine the various types of sugar, and the total quantities of each type, to be produced during each year. Such determination shall be

made upon the basis of the total quantity of each type of sugar which can in the opinion of the Association be beneficially marketed during each year, and shall take account of stock requirements.

(2) Having so determined the total quantity of each type of sugar to be produced in each year, the Association shall allocate to each miller the quantity of each type of sugar to be produced by him (hereinafter referred to as his “type-determinations”), and each miller shall produce in each year only the types of sugar and the quantities of each type so allocated to him; provided however that, notwithstanding the foregoing, the division of the Overall Agreement and the Negotiated Price Quotas laid down in the Commonwealth Sugar Agreement shall always be made solely between Mhlume (Eswatini) Sugar Company Limited and Ubombo Ranches Limited, and the said quotas shall not be allocated in any other way without the prior formal consent in writing of the two milling companies concerned and of the Mhlume Planters’ Group and the Big Bend Planters’ Group.

Exchange of type determinations between millers.

30. Notwithstanding anything to the contrary contained in Clause 29(2) above, any miller shall have the right, with the consent of the Sugar Association, to exchange any of his type-determinations with any other miller, provided that this shall not involve the Association in any additional financial burden.

Other matters not specifically provided for.

31. The Sugar Association shall have power to determine any matter relating to the control of production within the general framework of Chapter IV of this Agreement but not specifically provided for herein, and generally to frame rules and procedures for the better carrying out of the provisions of this Chapter.

No differential treatment.

32. In the determination of all issues directly or indirectly affecting the rights, duties, benefits or obligations of growers or millers, no differential treatment shall be suffered or permitted save as may be specifically provided for in this Agreement: and furthermore save as may be specifically provided for in this Agreement all benefits or obligations applicable to growers or to millers (other than the allocation of reduction or curtailment of quotas) shall be applied uniformly and not differentially between all growers or between all millers, as the case may be.

[Amended G.N. 15/1968.]

Quota Board to act in accordance with principles of justice and its acts and proceedings to be subject to review by the Court.

33. In exercising the jurisdiction, powers and functions conferred upon it by this Agreement the Quota Board shall before coming to any decision give all interested parties the opportunity of being heard before it on the matter in question, and shall in coming to any decision act reasonably and equitably in accordance with the circumstances of the case and the principles of justice.

[ISSUE 1]

CHAPTER V

MILL GROUP COMMITTEES

Establishment, membership and procedure of Mill Group Committees.

34. (1) On this Agreement coming into force there shall be established a Mill Group Committee for each mill. Any Mill Group Committee already in existence when this Agreement comes into force shall be deemed to be established under this Agreement, but shall make such changes in its composition, functions and procedures as may be necessary to bring it into conformity with this Agreement.

(2) Each Mill Group Committee shall consist of an equal number of representatives of the miller and of the growers attached to the mill.

(i) The miller concerned shall appoint —

- (a) the miller representatives on the Mill Group Committee;
- (b) a replacement to fill any casual vacancy caused by any miller representative resigning or for any other reason ceasing to hold office before the end of his period of office; and
- (c) an alternate to each miller representative to act in his place during his absence or inability to act.

(ii) The growers (or, if such growers are fully represented by an association, the association of growers) concerned shall appoint —

- (a) the grower representatives on the Mill Group Committee;
- (b) a replacement to fill any casual vacancy caused by any grower representative resigning or for any other reason ceasing to hold office before the end of his period of office; and
- (c) an alternate to each grower representative to act in his place during his absence or inability to act.

(iii) The members of the first Mill Group Committees appointed after the coming into operation of this Agreement shall hold office until they are replaced by new appointments, which may be made annually in the last month of each year; and any such new members appointed then or in subsequent years shall similarly hold office until replaced by new appointments.

(3) Any dispute that may arise concerning the number or the appointment of members or the representation of growers or of the miller on any Mill Group Committee, or any other matter affecting the establishment or operation of a Mill Group Committee (not being a dispute arising out of the rejecting of cane by a miller), and any matter on which a Mill Group Committee is equally divided and unable to reach a decision, shall be referred to and decided by the Sugar Association.

(4) All questions for decision by a Mill Group Committee shall be decided by a majority of the members present at a properly constituted meeting thereof at which an equal number of grower and miller representatives are present.

(5) Each Mill Group Committee shall appoint one of its members to act as its Chairman, and shall also appoint a Secretary. The Chairman shall not have a casting vote if the Committee shall be equally divided upon any matter.

(6) Each Mill Group Committee shall formulate its own rules for the conduct of its meetings.

(7) The Sugar Association may, for the assistance of Mill Group Committees, issue guiding rules and regulations for the Mill Group Committees and the conduct of their affairs.

(8) Proper minutes and records shall be kept of all meetings and proceedings of Mill Group Committees, and copies thereof shall be forwarded to the Sugar Association as soon as possible.

(9) The administrative and other expenses of Mill Group Committees shall be financed locally in such manner as may be agreed between the growers and the miller represented thereon.

Determination of length of season in each year.

35. With effect from the 1967/68 season the milling season in respect of each mill shall start on the first working day in May unless agreed to the contrary between millers and growers through the medium of the appropriate Mill Group Committee. Each miller shall determine the length of his season provided, however, that all cane deliverable to any mill in any one year in terms of this Agreement (other than by the miller himself as a miller-cum-planter) will be accepted and crushed during a period which shall not exceed 33 weeks of actual crushing, that is to say, excluding periods when the mill is open but not operating because of rain and other interruptions beyond the control of the miller concerned as specified in Clause 44 (2) of this Agreement: Provided always that the foregoing period of 33 weeks will not apply to sucrose in excess of 100,700 tons in respect of each area. The season may however be extended if by reason of its fibre content the cane supplied to the mill cannot be crushed within the foregoing period. The season may, however, be extended, by agreement between millers and growers' through the medium of the Mill Group Committee, provided always that agreement in the Mill Group Committee shall be unanimous.

Seasonal estimates by Mill Group Committees.

36. (1) It shall be the duty of every Mill Group Committee to make estimates (hereinafter referred to as "seasonal estimates") of the quantity of cane that will be produced by each grower (including any miller-cum-planter) attached to the mill in its area during each season and to convert such quantities into tons of sucrose. Such seasonal estimates shall be made by the 31st day of March in each year as at the beginning of each following year, and shall thereafter be revised as at the 1st day of July, the 1st day of September and a date six weeks prior to the estimated closing of the season in each year, or at such other intervals during the year as the Sugar Association may prescribe.

(2) It shall be incumbent on every grower (including every miller-cum-planter) attached to a mill to supply his Mill Group Committee whenever called upon to do so with full and accurate information on all such matters as the Mill Group Committee may from time to time require in order to make the seasonal estimates aforesaid and to carry out its other functions under this Agreement. Every grower and miller-cum-planter shall in particular (and without derogation from the generality of the aforesaid) supply his Mill Group Committee with full and accurate particulars regarding the following matters:

- (a) the area of land and the tonnage of cane harvested by him during the previous year, detailing this information by fields and varieties of cane;

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- (b) the area of land which he has under cane at the beginning of the current or forthcoming year, including any area still to be planted as well as any ploughed out canefields which may be under fallow or in preparation for replanting in the current or forthcoming year, detailing this information by fields and varieties of cane;
- (c) the area of land and his estimate of the tonnage of cane to be harvested by him during the current or forthcoming season, detailing this information by fields and varieties of cane;
- (d) the area of new land, including virgin land, land under other crops and grazing land, to be planted with cane during the current or forthcoming season, detailing this information by fields and varieties of cane;
- (e) during the milling season each grower shall supply the Mill Group Committee as requested with a confirmed or revised estimate, field by field, of the remainder of the crop to be delivered.

(3) Any failure on the part of a grower or miller-cum-planter to give information to his Mill Group Committee as provided in sub-clause (2) above shall entitle the Mill Group Committee concerned to make its own assessments of the particulars required by it and to make its seasonal estimates of such grower's (or miller-cum-planter's) deliveries on the basis of such assessments.

(4) Unless it shall otherwise resolve, each Mill Group Committee shall appoint a panel, person or assessor to check any particulars submitted to it by any grower or miller-cum-planter and/or to assist it in preparing its own assessment of any particulars of information which it may require from any grower (including any miller-cum-planter) and which such grower or miller-cum-planter has failed to furnish.

(5) Subject as aforesaid, each Mill Group Committee may formulate its own rules for the taking out of estimates, the submission of information in connection therewith, and generally for the carrying out of its functions and duties under this Agreement. Mill Group Committees shall also have jurisdiction to determine any question relating to estimates of growers' production which is not specifically provided for in this Agreement.

Distribution of shortfalls.

37. (1) If it shall appear from any seasonal estimate made in terms of Clause 36 above that there will in the case of any grower (including any miller-cum-planter) be a deficiency between the full amount of sucrose which such grower is entitled to deliver to the mill pursuant to his Schedule "A" and "D" quotas, (after taking into account any cut therein made by the Sugar Association in terms of Clause 28 hereof), and the amount of his actual deliveries as estimated in terms of Clause 36(1) (which deficiency is herein referred to as a "shortfall"), and that there will in the case of any other grower (including any miller-cum-planter) be an excess of his actual deliveries as estimated in terms of Clause 36(1) hereof over the full amount of sucrose which he is entitled to deliver to the mill pursuant to his Schedule "A" and "D" quotas, (after taking into account any cut as aforesaid), (which excess is herein referred to as a "surplus"), the Mill Group Committee shall aggregate all such shortfalls and distribute the total quantity of sucrose so aggregated amongst those growers (including any miller-cum-planter) who have surpluses, *pro rata* to the quotas of such growers, but not allocating to any grower (or miller-cum-planter) any quantity in excess of his surplus.

(2) Each Mill Group Committee shall make an initial distribution of shortfalls as aforesaid at the beginning of each year on the basis of its initial seasonal estimates for such year taken out in terms of Clause 36(1), and shall thereafter make revised distributions of shortfalls immediately after taking out its subsequent revised seasonal estimates in terms of Clause 36(1): Provided that if, after making a distribution of shortfalls for the second time, neither the shortfalls nor the surpluses are exhausted, the Mill Group Committee may determine whether to make further distributions in terms of this clause or to distribute any remaining shortfalls *pro rata* to any remaining surpluses in one final calculation.

(3) In order to enable the shortfalls so distributed to be fulfilled during the season under consideration by growers with surpluses to whom they are allocated, every grower shall render to his Mill Group Committee a final estimate as at a date six weeks prior to the estimated closing of the season, at which date surpluses and shortfalls shall be finally established by the Mill Group Committee for the season under consideration. Every grower shall be obliged when rendering such final estimates to nominate the fields to be harvested by him, and shall further be obliged to harvest and deliver all cane from such fields or to fulfil his final estimated delivery, whichever shall be the less.

(4) Should the distribution of shortfalls as aforesaid result in the exhaustion of surpluses for any Mill Group, the Mill Group Committee shall advise the Sugar Association of any shortfall still remaining undistributed, and the Sugar Association shall be entitled either to cancel such shortfall outright or to re-distribute the same amongst all other Mill Groups having surpluses still remaining after exhaustion of all their various shortfalls, *pro rata* to such surpluses.

(5) If after allowing for a tolerance of 5% (five per centum) on the deliveries of any grower remaining unfulfilled after the determination of the final delivery schedule for any season in terms of Clause 39 below, there should be a deficiency between the final seasonal estimate for any grower and his actual delivery for that season, his Mill Group Committee shall forward particulars thereof to the Sugar Association and, unless the Sugar Association is reasonably satisfied after hearing the grower that the deficiency was due to causes beyond his control, the Sugar Association may recommend to the Quota Board that such grower's total quota for the next succeeding season should be reduced by an amount not exceeding such deficiency, and the Quota Board may reduce such grower's total quota as aforesaid. Such reduction shall be applied to a grower's Schedule "D" quota in preference to his Schedule "A" quota, and to his contingency quota in preference to any basic quota. If such grower disposes of a portion of any quota held by him the reduction shall be applied —

- (a) where his successor acquires the whole of such grower's quota, against that successor;
- (b) where two or more persons purchase between them such grower's quota, against such persons *pro rata* to the portions of the quota so purchased; or
- (c) where such grower disposes of a portion of his quota and retains the balance thereof, against such grower and his successor *pro rata* to the portion of the quota retained by such grower and the portion acquired by his successor, respectively.

Special delivery arrangements for cane damaged by fire, frost, drought, etc., and diversion of cane from one mill to another in the event of emergency.

38. (1) Notwithstanding anything to the contrary elsewhere herein contained, Mill Group Committees may make special delivery allocations to any grower (including any miller-cum-planter) at any time to facilitate the reasonably prompt delivery of cane damaged by fire, frost,

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drought, flood or any other such cause beyond such grower's control, and shall within a reasonable time notify the Sugar Association of any such special delivery allocations made by it. Where any such allocation has the effect of increasing any such grower's delivery above the maximum deliverable by him for the season in terms of this Agreement (after distribution of any shortfalls) the Quota Board shall be advised thereof, and the amount of such excess shall be deducted from his quota(s) for the next succeeding season only.

(2) Notwithstanding anything to the contrary elsewhere herein contained, the Sugar Association may, in the event of any emergency which it shall deem to be sufficient cause, authorise the diversion of any cane from the mill to which it should be delivered in terms of the Schedule "A" quota of the grower or miller-cum-planter concerned to any other mill, provided that both millers concerned consent thereto in advance. The Sugar Association may also determine that the whole or any part of the costs and expenses incurred by reason of any such diversion shall be an Industry Obligation as defined in Clause 53 and paid by the Association accordingly in terms of Clause 54.

Preparation of delivery schedules.

39. (1) Upon a basis which shall take into account the quotas of all growers (including any miller-cum-planter) attached to its mill, the application of any cut made in the said quotas by the Sugar Association in terms of Clause 28 above, the season estimates of each grower's production made in terms of Clause 36 hereof and the distribution of any shortfalls in terms of Clause 37 hereof, each Mill Group Committee shall prepare a Delivery Schedule for every season for the purpose of controlling and regulating deliveries by growers (including any miller-cum-planter) to the mill. Such schedule shall be prepared in accordance with such guiding rules as the Sugar Association may from time to time prescribe, and shall be drawn up in the first instance at the beginning of each year and shall thereafter be revised at the 1st day of July, the 1st day of September and a date six weeks prior to the estimated closing of the season in each year, or at such other intervals during the year as the Sugar Association may prescribe.

(2) The last but one of the said Schedules shall be regarded as a provisional final Schedule, and any cut to be determined by the Sugar Association in terms of Clause 28 thereof shall be finally determined on the basis of such Schedule. The last of the said Schedules shall be the final delivery Schedule for the season and, unless otherwise determined by the Sugar Association, shall not be subject to further revision save for any further distribution of shortfalls.

(3) The aforesaid Delivery Schedules shall make provision for the cane of each grower (including any miller-cum-planter) to be delivered to the mill rateably over the season, unless the Mill Group Committee shall otherwise decide.

Allocation of filter cake.

40. Growers (including miller-cum-planters) shall have the right to participate in filter cake residual from milling operations, and the same shall be allocated to them *pro rata* to the quantities of sucrose provided by them and in accordance with such arrangements as may be made in that behalf between millers and the respective Mill Group Committees provided that such quantities shall be collected by the growers within a reasonable time.

Appeal from decisions of Mill Group Committee to the Sugar Association.

41. Any person adversely affected by any decision of a Mill Group Committee (not being a decision on the question of the rejection of cane) shall be entitled to appeal against such decision to the Sugar Association, which shall be entitled to vary, set aside or uphold such decision, and whose determination thereon shall be final.

CHAPTER VI

SALE AND DELIVERY OF CANE, AND MARKETING AND DISPOSAL OF SUGAR

All sugar to be marketed only by the Sugar Association.

42. All sugar produced by millers and all refined sugar produced by refiners shall be marketed and disposed of only by the Sugar Association, save and to the extent the Association may provide otherwise.

Delivery of cane to mills.

43. (1) Save as otherwise provided in this Agreement, millers undertake to accept all cane delivered to their mills in each season by growers attached to their mills to the full extent of such growers' entitlement to deliver under this Agreement or to such other extent as may be authorised by the Quota Board or the Sugar Association. Such cane shall be delivered and accepted in accordance with the programme of delivery from time to time laid down by each Mill Group Committee in its Delivery Schedules.

(2) Every miller shall provide access to the mill across his property for delivery of cane by growers attached to his mill. Such access shall be reasonable in regard to distance, direction and state of maintenance. Nothing in this sub-clause shall however oblige a miller to construct or provide any new access road over his property where there is such an existing access road to the mill.

(3) Cane shall be transported to mills by such method of transport as shall be reasonably approved by the miller concerned in consultation with the Mill Group Committee and in bundles not exceeding a maximum weight to be specified by such miller, in consultation with the Mill Group Committee and in relation to the facilities available for reception of cane at the mill, and shall be secured and labelled in such manner as the miller may from time to time reasonably require. Millers shall not be obliged to accept cane from growers if it is transported by any method of transport other than that approved by the miller, or in bundles not suitably secured with chains in the manner approved by the miller, or in vehicles that do not conform with traffic rules and regulations.

(4) Millers shall unload all cane from growers' vehicles without unreasonable delay, and shall likewise provide chains without unreasonable delay. Should however a grower's bundle of cane collapse in the cane yard due to poor bundling the miller shall have authority to require the grower or his employees to rectify it forthwith or rectify it himself at the grower's expense.

(5) Each Mill Group Committee shall agree on the procedure for the making available and handling of chains for securing growers' bundles, and millers shall comply therewith. The miller shall be responsible for the maintenance of such chains and their replacement from time to time, and shall be entitled to recover the cost thereof from all growers delivering cane to the

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mill (including himself as a miller-cum-planter) *pro rata* to the chain allocation of each, as established by each grower's receipts for chains issued to him, provided that the cost of chains lost in the hands of a grower (including a miller-cum-planter) shall be borne solely by such grower.

(6) The procedure for the weighing and testing of cane delivered to millers by growers and the respective rights and obligations of millers and growers in connection therewith shall be as set out in Schedule "C" to this Agreement.

Sale of cane by growers to millers.

44. All cane delivered to mills in terms of this Agreement shall be deemed to be sold by the delivering grower to the miller pursuant to a contract of sale between them, the terms of which shall be as follows:

(1) The cane shall be delivered by the grower to the mill at the grower's expense. All cane delivered by growers (including miller-cum-planters) shall be in good condition, containing not more than five per centum by weight of trash, tops (being cane above the highest fully developed joint), dirty and roots collectively, and in all respects suitable and ready for milling and processing. Cane may be either trashed or burnt at the grower's option. The miller shall be entitled to reject any cane delivered to his mill which in his opinion does not comply with the foregoing provisions: Provided that if the grower shall dispute the miller's decision on the condition of any cane delivered, such dispute shall be referred to the parties' Mill Group Committee for decision, and the decision of the Mill Group Committee thereon shall be final.

(2) The miller shall not be liable to any grower for any loss or damage that such grower may suffer or incur by reason of the interruption or cessation of milling operations though breakdowns, "factory full", floods, fire, lightning, strikes, lockout, riot, civil commotion or war, loss of markets or other causes beyond the control of the miller concerned.

(3) The ownership and the risk in all cane delivered to a miller in terms of this Agreement shall pass to the miller receiving the same on delivery of the cane to the miller at his weighbridge, except in those cases where reasonable doubt exists as to quality, in which case the consignment shall be set aside, and the grower notified as quickly as possible.

(4) The price payable by the miller to each grower for cane sold and delivered in terms hereof shall be determined in accordance with the provisions of Clause 46 below, and shall be paid in the manner laid down in that clause.

Price payable for sugar sold by the millers to the Sugar Association.

45. At the commencement of each year the Sugar Association shall determine the mill-months for that year and advise every miller of such determination. All sugar produced by every miller during each mill-month shall be deemed to be sold to the Sugar Association upon the following terms and conditions:

- (a) The risk and ownership in all such sugar shall pass to the Sugar Association when the manufacture thereof is completed and the sugar has passed into the mill store, but the miller who manufactured it shall continue to store it at a charge to be determined by the Association until receipt of instructions from the Association as to the further disposal thereof. On receipt of the Sugar Association's instructions for further disposal the miller shall comply with the same at the expense of the Association.

- (b) The price payable by the Sugar Association to the millers for all sugar manufactured and sold to the Association during a milling season shall be expressed as a price per ton of 96° pol equivalent sugar as defined in Schedule “F” and shall be arrived at by dividing the total sugar proceeds accruing in respect of each year less manufacturing allowances in respect of white sugar manufactured for local consumption and less all Industry Obligations as defined in Clause 53 received in respect of each year, by the aggregate tonnage of 96° pol equivalent sugar sold by the millers to the Sugar Association during each year. The price so determined shall be known as the Base Price of 96° pol sugar.
- (c) Notwithstanding the provisions of sub-clause (b) hereof the actual price paid to each miller shall incorporate an adjustment in respect of the cost of road transport from mill to railway siding and the cost of rail transport from railway siding to Lourenco Marques and/or such other points as the Eswatini Sugar Association may decide calculated as follows:
- (1) By debiting each miller with an amount arrived at by multiplying the tonnage of export sugar so transported by the respective rate per ton costs of road and rail transport from his mill;
 - (2) By crediting each miller with an amount arrived at by multiplying the tonnage of export sugar so transported from his mill by the weighted average rate per ton cost of road and rail transport from all mills;
 - (3) By dividing the net debit or credit for each miller by the total tonnage of 96° pol equivalent sugar produced by his mill;
 - (4) By applying the resultant amount per ton of 96° pol equivalent sugar for each miller to the base price of 96° pol equivalent sugar to arrive at the price to be paid to that miller for each ton of 96° pol equivalent sugar produced by his mill.

[Sub-s. (4) amended G.N. 15/1968.]

Price payable for cane sold by growers to millers.

46. (1) The price payable by the miller to each grower for cane sold and delivered during a milling season shall be expressed as a price per ton of sucrose in the cane so delivered and shall be arrived at by adding together the:

- (a) price per ton of sucrose determined in accordance with the provisions of Schedule “F” (1), (2) and (3) attached hereto.
- (b) due proportion in accordance with the provisions of Schedule “F” (4) attached hereto of the value of molasses expressed as an amount per ton of sucrose and arrived at by dividing the due proportion of the total net molasses proceeds at the particular mill by the total tons of sucrose delivered to that mill during the season.

[Para. (b) amended G.N. 15/1968.]

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- (c) due proportion in accordance with the provisions of Schedule “F” (4) attached hereto of the value of any other by-product disposed of according to the principles outlined in Clause 49, expressed as an amount per ton of sucrose and arrived at by dividing the total value thereof by the total tons of sucrose delivered during the season.

(2) The tons of sucrose in the cane delivered shall be determined in accordance with the provisions of Schedule “C” hereto.

(3) The price per ton of sucrose calculated in terms of sub-clause (1)(a) above shall be paid by the miller to each grower within thirty days after the date on which the net average price paid by the Sugar Association to the miller for 96° pol equivalent raw sugar is finally determined for the season and the values of molasses and any other by-product in terms of sub-clauses (1)(b) and (1)(c) respectively shall be paid within thirty days of the receipt of the final proceeds by the miller for the season.

(4) Any retentions in terms of Clause 47(2) shall bear interest at a rate equal to the South African Reserve Bank rate plus 200 reckoned from the dates of the provisional payments to the date on which the final price is paid.

Provisional Payments.

47. (1) The sugar Association shall from time to time during each year estimate the price of 96° pol equivalent sugar which will finally be paid to each miller in terms of clause 45 and shall on the basis of such estimates make provisional payments to millers during the year in such manner as the Council of the Sugar Association shall determine, provided that such provisional payments shall in no event be made later than thirty days after the end of the mill month in which the sugar is produced.

[Sub-s. (1) amended G.N. 15/1968.]

(2) Each miller shall, as soon as reasonably practicable and within fourteen days of the receipt of each such provisional payment from the Sugar Association, make a provisional payment to growers which shall be not less than 95% (ninety-five per centum) of the amount arrived at by the application of the provisions of Schedule “F” to such provisional price received from the Sugar Association. Each miller shall in addition make provisional payments to growers in respect of net molasses proceeds received or the value of by-products determined from time to time, calculated in the manner set out in Clause 46(1)(b) and 46(1)(c) within fourteen days of the receipt or determination thereof respectively.

Establishment of Cane Prices Review Committee.

48. (1) (a) As from the date when this Agreement comes into operation there shall be established a committee to be known as the Cane Prices Review Committee.

(b) The Cane Prices Review Committee shall consist of a Chairman and two other members, who shall be appointed by the Sugar Association as and when necessary in accordance with the requirements of Schedule “F”, and shall, as far as possible, be appointed in such a way as to ensure reasonable continuity in membership.

(c) The Chairman shall be an independent person having no financial interest directly or indirectly in the Industry but shall have knowledge of the operations in all phases of sugar production generally.

(d) The two other members shall be accountants of standing and preferably with knowledge of accounting as it affects sugar production generally.

(2) The Cane Prices Review Committee shall have authority —

- (a) to undertake such investigations and enquiries as may be necessary to review the deduced cost of manufacturing a ton of sugar of 96° pol equivalent, the deduced cost of producing a ton of sugar cane, and the relative capital employed in manufacturing a ton of sugar of 96° pol equivalent and producing a ton of cane;
- (b) to recommend to the Sugar Association as the result of each review undertaken such changes as it considers to be equitable in the values, or use of, any of the factors entering directly or indirectly into the method of computing the price per ton of sucrose;
- (c) to require millers and growers to make available in confidence to the Cane Prices Review Committee such data and information as will enable the Committee to deduce equitable notional costs.

CHAPTER VII BY-PRODUCTS

General Principle.

49. (1) The Industry accepts the principle that whenever a true market can be established for a by-product, and the marketing thereof is more beneficial to both millers and growers, taking into consideration the capital and costs incurred in the Industry in diverting the by-product to such market, than any use to which the by-product is being or has been put, then the by-product may be marketed in accordance with the provisions of this Agreement, and the cane growers shall be entitled to share in the net proceeds of sale and payment to cane growers shall be made as laid down in Clause 46(1)(c).

(2) Whenever a miller directly turns to account commercially or directly and deliberately employs for his own benefit a by-product, then the value to be attributed to such by-product shall, as far as practicable, be assessed, and the cane growers attached to that mill shall be entitled to share in the proceeds or value to be attributed as laid down in Clause 46(1)(c):

Provided that the indirect use of any part of a by-product which would otherwise have gone to waste (such as waste steam) shall not be counted as beneficial use for the purposes of this Clause.

[Proviso amended G.N. 15/1968.]

Molasses.

50. All molasses produced by millers from cane supplied by growers shall be marketed and disposed of by the Sugar Association under contracts where necessary and with the consent of the Association may be entered into by the milling companies and the net proceeds at each mill shall be paid to that particular miller.

[Amended G.N. 15/1968.]

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Filter Cake.

51. Filter cake shall be dealt with as provided in Clause 40 above and, save as aforesaid, nothing in this Chapter shall apply to filter cake.

Exclusion of Bagasse.

52. (1) Nothing in this Chapter shall apply to bagasse so long as and to the extent that any miller uses the same as boiler fuel in the course of or part of the process for the production exclusively of sugar, if such results in a saving of milling expenses.

(2) Any other beneficial use of bagasse by a miller shall be dealt with in terms of Clause 49(2) above.

CHAPTER VIII

FINANCING OF INDUSTRY OBLIGATIONS AND GENERAL

Definition of Industry Obligations.

53. The general administrative and all other capital and revenue expenditure incurred by the Sugar Association from time to time in pursuit of its objects, including all costs and expenses in connection with the payment of staff salaries, rental, interest, bank and finance charges, storage charges, legal expenses, advertising expenses, donations and other out-goings, and all costs and expenses in connection with overseas representation, delegations, public relations, the establishment and granting of bursaries, research, the expenses of the Quota Board, the making good of losses incurred through the granting of manufacturers' rebates or any other rebates and expenses in connection with the storage, transport, insurance, shipping or freight of sugar or by-product or brokerage or commission relating thereto, shall be Industry Obligations, together with any other heads of expenditure referred to in this Agreement as Industry Obligations or which the Sugar Association may from time to time determine to be Industry Obligations.

Retention of proceeds of sales to meet Industry Obligations.

54. For the purpose of enabling it to meet and discharge all Industry Obligations, as aforesaid, the Sugar Association shall retain such amounts as it may from time to time determine out of the proceeds of sugar and/or by-products sold by it, and it shall pay and discharge all such Industry Obligations out of the amounts so retained. Furthermore the Sugar Association shall be entitled, in case of need, to make similar retentions to meet any outstanding current liabilities at any time.

Arbitration.

55. (1) Any dispute between any parties on whom this Agreement is or shall be binding respecting their rights or obligations under this Agreement, or arising from any failure to reach agreement on any matter which this Agreement contemplates should be agreed or on any matter concerning the interpretation or operation of this Agreement, may be referred to arbitration in terms of this clause at the instance of any interested party, and the Sugar Association shall approve any amendment to this Agreement in terms of the award upon such arbitration.

(2) Any arbitration in terms of this clause shall be arranged and conducted in terms of the arbitration laws from time to time in force in Eswatini. Every arbitrator acting in terms of this clause shall have regard to the economic interests of the Industry and shall not be influenced by any consideration that may not be in accord with the economic interests of the Industry.

(3) Notwithstanding anything to the contrary elsewhere herein contained, and subject to the provisions of Clause 33 —

- (a) no decision of the Quota Board on a matter within its discretion may be referred to arbitration in terms of this clause by any person aggrieved by such decision;
- (b) no decision of a Mill Group Committee or of the Sugar Association on a matter which this Agreement contemplates should be decided by such Mill Group Committee or by the Association, as the case may be, may be referred to arbitration in terms of this clause by any person aggrieved by such decision; and
- (c) nothing in this clause shall limit or affect the application of Clause 41 of this Agreement.

Nominations and Appointments.

56. All nominations and appointments required to be made in terms of this Agreement shall, unless otherwise specifically provided, be made within a reasonable period from the time they are so required.

SCHEDULE "A"			
SCHEDULE OF GROWERS' QUOTAS AS AT			
<i>Schedule 'A'</i>	<i>Name of Grower</i>	<i>Basic Quota Tons Sucrose</i>	<i>Contingency Quota Tons Sucrose</i>
			<i>Total Quota Tons Sucrose</i>
<u>MHLUME MILL</u>			
	TOTAL		
<u>UBOMBO MILL</u>			
	TOTAL		
	INDUSTRY TOTAL		

SCHEDULE "B"

[Amended L.N. 18/1969; L.N. 46/1975; replaced L.N. 174/1996; L.N. 60/1999.]

[Under Clause 12.]

APPROVED CANE VARIETIES

Approved for general cultivation in:

1. Malkerns *

N14

N22

N23

N24

N25

N26

N28

N30

*The Malkerns region is defined as comprising those growers who draw water upstream from the confluence of the Usuthu and the Usushwana rivers.

2. Rest of the Sugar Industry—

Nco 376

N14

N17

N19

N22

N23

N24

N25

N26

N28

N30

Approved conditionally for cultivation on declared and identified acreage but not for further planting or replanting in—

All regions—

Nco 334

N52/219

N15

CP66/1043.

SCHEDULE "C"

DETERMINATION AND DISTRIBUTION OF SUCROSE IN CANE

1. Definitions.

In this Schedule the definition for pol, sucrose, brix, first expressed juice, mixed juice, final bagasse, Java Ratio and C.C.J.S. shall be the definitions laid down in the South African Sugar Technologists Association's Laboratory Manual for South African Sugar Factories, as amended from time to time and which is referred to hereinafter as the Laboratory Manual.

2. Cane Testing Service Technical Committee.

- (a) The Sugar Association shall establish a Cane Testing Service Technical Committee consisting of four members of which two shall be appointed on the nomination of the Millers' Association and two on the nomination of the Growers' Association.
- (b) The Cane Testing Service Technical Committee shall be responsible for the supervision of the cane testing service at the mills and shall advise the Sugar Association on all matters relating to the testing of cane in Eswatini.
- (c) The Cane Testing Service Technical Committee shall have power to co-opt advisers to assist it whenever and for as long as it may deem fit, but such co-opted members shall act in an advisory capacity only and shall not be entitled to vote at meetings of the Committee.

3. Cane Testing Service.

- (a) A cane testing service shall be maintained at each mill for the purpose of determining the sucrose content of cane supplied by growers, including the miller-cum-planter, in accordance with the procedures detailed in this schedule, or
- (b) if at any mill a majority of 75 per cent of the supplying growers (other than the miller-cum-planter) representing more than 50 per cent of the total quotas of such growers do not desire that the cane testing service be maintained by the miller an independent cane testing service shall be established by the Sugar Association for the same purpose as indicated above.
 - (i) The cost of providing any such independent cane testing service shall be recovered by the Association from the miller and all growers (including the miller-cum-planter) in the area concerned by deduction in arriving at the amount paid for sugar sold by such miller to the Association during the year as calculated in terms of clause 45.
 - (ii) Satisfactory accommodation for chemists, testers and all other staff employed in the independent cane testing service, as well as laboratory buildings and all equipment shall be supplied and maintained by the Sugar Association in consultation with the miller concerned. The cost thereof shall be part of the cost of the service to be assessed by

the Cane Testing Service Technical Committee in consultation with the miller concerned and defrayed through payment of an annual rental or fee.

- (c) The Miller's Association, Growers' Association, Sugar Association and Mill Group Committee, or any person duly authorised by any of the aforementioned organisations, shall have reasonable access to the mills and all the records pertaining to the testing of cane.
- (d) If the cane testing service is an independent service the mill management or any person duly authorised by the mill management shall have reasonable access to the independent cane testing service laboratory and the records pertaining to the testing of cane.

Weighing of Cane, Mixed Juice, Imbibition Water and Final Bagasse.

4. Weighing of Cane.

- (a) The miller shall provide weighbridge scales (permitted and approved by the Weights and Measures Act or such other authority as may be agreed by the Cane Testing Service Technical Committee) for weighing cane.
- (b) Such weighbridge scales shall be equipped with an automatic self-recording device.
- (c) Suitable equipment shall be provided for draining the weighbridge pit.
- (d) If it is recommended by the Cane Testing Service Technical Committee, the weighbridge scales shall be fitted with a device to prevent any recording or printing being effected while the pointer is moving.
- (e) If it is recommended by the Cane Testing Service Technical Committee, some automatic device to ensure that the vehicle to be weighed is correctly placed on the weighbridge platform shall be provided.

5. Procedure for Weighing of Cane.

- (a) The weighbridge scale shall be situated as near as possible to the offloading site in order to minimize any loss or gain in weight after the cane has been weighed.
- (b) Numbered tickets upon which the gross weight of the vehicles shall be recorded by means of stamping or printing device attached to the weighbridge shall be used on all weighbridges.
- (c) Weighbridges for weighing cane shall be of the automatic self-recording type.
- (d) The weight of the cane shall be obtained by subtracting the gross tare from the gross weight of the vehicle and its contents.
- (e) Gross tare means the weight of the vehicle (nett tare) plus weight of all loading poles or chains and all extraneous matter, but not the weight of matter originally adhering to the cane in normal practices of harvesting.

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- (f) The vehicle shall be weighed after off-loading each consignment where facilities for doing so exist, otherwise the vehicle shall be weighed after off-loading as often as is agreed upon by the miller and grower concerned, but in any event at least once daily.
- (g) Both the miller and growers shall have the right to request a check of the tare weight of the vehicle at any reasonable time and the new tare weight shall apply as and when established until the next determination thereof.
- (h) The tare of chains and poles included in the gross weight of the vehicle shall be determined by substituting a similar number of chains or poles upon the empty vehicle to be reweighed.

6. Weighing of Mixed juice.

The miller shall provide scales of the automatic variable-load type (permitted and approved by the Weights and Measures Act or such other authority as may be agreed by the Cane Testing Service Technical Committee) for weighing mixed juice.

7. Weighing of Imbibition Water.

- (a) The miller shall provide scales of the automatic variable-load type (permitted and approved by the Weights and Measures Act or such other authority as may be agreed by the Cane Testing Service Technical Committee) for weighing imbibition water.
- (b) Any water used for washing down purposes or cooling of bearings which may enter the mixed juice before weighing shall be determined by weighing and included in the weight of imbibition water.

8. Determination of Weight of Final Bagasse.

- (a) If final bagasse is not weighed, the weight thereof shall be determined by inference assuming the fundamental equation to be exact:

Weight of Cane + Weight of Imbibition Water =

Weight of Mixed Juice + Weight of Final Bagasse.

Therefore: Weight of Final Bagasse – Weight of Cane

+ Weight of Imbibition Water = Weight of Mixed Juice.

- (b) If final bagasse is weighed, the miller shall provide scales of the automatic variable-load type (permitted and approved by the Weights and Measures Act or such other authority as may be agreed by the Cane Testing Service Technical Committee) for weighing final bagasse.

9. Checking of Scales.

- (a) All scales used for weighing mixed juice, imbibition water, and/or final bagasse shall be checked annually before the start of each season and at least once every three months during the season by an authority approved by the

Cane Testing Service Technical Committee. Reports by such authority on the operation of the scales shall be made available to the Cane Testing Service Technical Committee.

- (b) In addition to the checks carried out by the authority referred to in (a) above, the chemist in charge of the cane testing service shall check all scales used for weighing cane, mixed juice, imbibition water and/or final bagasse in accordance with the procedures determined by the Cane Testing Service Technical Committee.
- (c) In the event of any scale being found to be not functioning properly the chemist in charge of the cane testing service shall immediately report the matter to the mill management, who shall, without delay, take steps to have the scale repaired or adjusted, as the case may be.
- (d) Monthly reports by the chemist in charge of the cane testing service on his checks of the scales, shall be made available to the Cane Testing Service Technical Committee.
- (e) Checks on all scales used for weighing cane, mixed juice, imbibition water and/or final bagasse may be carried out by any person authorised by the Cane Testing Service Technical Committee or the Sugar Association.

10. General.

- (a) Steam injectors shall not be used for pumping weighed water or juices handled before the mixed juice scales.
- (b) The Cane Testing Service Technical Committee shall have specific power to amend or vary any of the fore-going conditions and/or procedures as it may deem fit.

11. Control of Stockpile of Cane in the Mill yard.

The Cane Testing Service Technical Committee shall, where necessary, assist the miller concerned to devise and introduce a system of controlling the cane stockpiled in the mill yard, so as to ensure that individual grower's cane is separately identified for sampling purposes and that the carry-over stockpile of cane at the end of each Java Ratio period can be accurately determined.

SAMPLING OF FIRST EXPRESSED JUICE, MIXED JUICE AND FINAL BAGASSE

12. Sampling of First Expressed Juice.

- (a) A sample of first expressed juice representing the maximum possible proportion, as approved by the Cane Testing Service Technical Committee, of the cane delivered by each supplier shall be taken in respect of every consignment of cane crushed: Provided that the Cane Testing Service Technical Committee shall have power to determine any amendment, alteration or interpretation of this provision, after consultation with the miller and growers concerned.

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- (b) The miller shall provide a continuous and automatic sampler for sampling first expressed juice, together with signalling devices as specified in the Laboratory Manual Chapter V Paragraph 4(a) and (b): Provided that the Cane Testing Service Technical Committee shall have power to determine any amendment, alteration or interpretation thereof, after consultation with the miller and growers concerned.
- (c) The sample of first expressed juice shall be taken along the whole width of the first two rollers of the crushing train and these samples shall be immediately transferred to the cane testing laboratory for analysis in an approved closed type container, suitably numbered or otherwise identified.
- (d) The procedure for sampling first expressed juice shall conform with the procedure set out in the Laboratory Manual Chapter V Paragraph 4.

13. Sampling of Mixed Juice.

- (a) The miller shall provide an automatic juice sampler for sampling mixed juice as specified in the Laboratory Manual Chapter V Paragraph 5: Provided that the Cane Testing Service Technical Committee shall have power to determine any amendment, alteration or interpretation thereof after consultation with the miller and growers concerned.
- (b) The procedure for sampling mixed juice shall conform with the procedure set out in the Laboratory Manual Chapter V Paragraph 5.

14. Sampling of Final Bagasse.

The procedure for sampling final bagasse and the manner in which such samples shall be stored shall in all respects conform with the provisions set out in the Laboratory Manual, Chapter V Paragraph 3: Provided that the Cane Testing Service Technical Committee shall have power to vary such sampling procedure after consultation with the miller and growers concerned.

15. Analysis of First Expressed Juice, Mixed Juice and Final Bagasse.

- (a) The methods of analysis for brix and pol of first expressed juice from separate consignments shall be those given in the Laboratory Manual, Chapter VII, 3 and 4(a) respectively.
- (b) Mixed juice shall be treated and analysed according to the procedures given in the Laboratory Manual, Chapter VIII, 5(a) and 5(c). The pol of the individual hourly samples, as well as the pol of the four-hourly composite sample, shall be determined by the method given in the Laboratory Manual, Chapter VII, 4(a). The difference between the percentage pol in the composite sample and the percentage Clerget sucrose shall be applied as a correction to the individual hourly pol analyses to obtain the percentage sucrose in the individual hourly samples. Calculation of tons sucrose in mixed juice shall be based on the percentage of sucrose in the individual hourly samples.

- (c) If, for any reason, the Clerget sucrose determination is not carried out by the miller, the Clerget analysis together with the pol analysis of the four-hourly composite sample shall be carried out by the Cane Testing Service to determine the correction which shall be applied to the hourly pol results.
- (d) Final bagasse shall be analysed by the method given in the Laboratory Manual, Chapter VIII, 2(a).
- (e) Where abnormal juices are encountered which cannot be analysed by the specified methods, the Cane Testing Service Technical Committee shall specify the methods which shall be used.

16. Calculation of Sucrose % Cane.

- (a) Sucrose % Cane for each consignment tested in accordance with Clause 12(a) shall be determined from the pol of its first expressed juice by the application of a Java Ratio in accordance with the formulae given in the Laboratory Manual, Chapter III, 5.
- (b) The Java Ratio shall be determined for fixed periods of one week.

17. Reporting of Results.

The miller or the independent cane testing service, shall report weekly to the Sugar Association and the Growers' Association the total weight of cane and sucrose delivered by each grower who delivered cane to the mill the preceding weekly period.

18. Inspections.

- (a) The Sugar Association and/or the Cane Testing Service Technical Committee shall have the right to authorise any person to carry out periodic inspections on the testing of cane at the mills. Such persons shall be entitled to inspect the mills at any time without prior notice.
- (b) The chemist in charge of the cane testing service at any mill shall be required to carry out regular inspections of all facets of the cane testing service as may be determined by the Cane Testing Service Technical Committee.

SCHEDULE "D"

SCHEDULE OF TEMPORARY ADDITIONAL GROWERS QUOTAS AS AT

<i>Schedule 'D' No.</i>	<i>Name of Grower</i>	<i>Quota Tons Sucrose</i>
<u>MHLUME MILL</u>		
	TOTAL	

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<i>Schedule 'D' No.</i>	<i>Name of Grower</i>	<i>Quota Tons Sucrose</i>
<u>UBOMBO MILL</u>		
	TOTAL	
	INDUSTRY TOTAL	

SCHEDULE "E"

THE ESWATINI SUGAR ASSOCIATION CONSTITUTION

NAME

1. The name of the Association shall be THE ESWATINI SUGAR ASSOCIATION, and it is hereinafter referred to as "the Association".

OFFICE

2. The Association shall have an Office situated in Eswatini, which shall be its registered office in the event of the Association becoming a corporate body and/or being required to have a registered office under any law.

LEGAL NATURE OF THE ASSOCIATION⁴

3. The Association shall be a voluntary association established for the objects and with the powers hereinafter set forth. It shall be capable of performing any legal act and of suing and being sued in any court of law in its own name, and may be represented in any contract, act or proceeding (including any legal proceeding) by its Council or by any person or persons duly authorised thereto by its Council.

4. Any legal process may be served upon the Association by delivery thereof to its Chairman or Secretary for the time being or at its Office to the person in charge thereof.

5. The Association may at any time seek and obtain corporate status as a juristic person separate and distinct from its members by registration under the Eswatini Companies Act or any other appropriate law.

6. The liability of the members of the Association for the indebtedness of the Association shall be limited to the amount of any debts due by them to the Association.

MEMBERSHIP AND REPRESENTATION OF MEMBERS

7. The members of the Association shall be the Eswatini Sugar Millers' Association (hereinafter referred to as "the Millers' Association") and the Eswatini Cane Growers' Association (hereinafter referred to as "the Growers' Association").

8. Each of the members of the Association shall be represented in the Association by six delegates appointed by it.

9. A member shall, whenever necessary, appoint a new delegate to replace an existing delegate either permanently or during his temporary absence or inability to act or to fill a vacancy caused by a delegate ceasing to hold office for any reason.

9bis. All appointments and replacements of the delegates shall be effected by letter written under the authority of the member of the Association making the appointment and delivered to the Association at its office. Delegates, once appointed, shall remain in office until they resign or are replaced or become disqualified from office in terms of clause 62.

OBJECTS OF THE ASSOCIATION

10. The objects for which the Association is established are:

- (a) To regulate the sugar industry in Eswatini as and to the extent defined in the Eswatini Sugar Industry Agreement as amended from time to time and to exercise such powers and perform such duties and functions given to the Association therein;
- (b) To promote and foster the sugar industry in Eswatini;
- (c) To provide machinery for the examination and adjustment of major grievances, and to promote agreement and co-operation between Eswatini sugar millers and growers on all matters of mutual interest, and to reconcile differences between all sections of and interests in the Eswatini Sugar Industry;
- (d) To deal with questions relating to labour in the Eswatini Sugar Industry and to promote and foster good relations between employers and employees in all sections of the Eswatini Sugar Industry;
- (e) To promote reciprocal and/or preferential arrangements as to duties and tariffs, with the object of fostering, stimulating and regulating the production of sugar in Eswatini;
- (f) To collect and circulate statistics and other information on all matters of interest to the Sugar Industry;
- (g) To take steps for the improvement of the technical knowledge of persons engaged in the Sugar Industry;
- (h) To establish and maintain experimental stations whether alone or in co-operation with others for research into any matters affecting the cultivation of sugar cane or the milling, processing or refining of sugar or any by-product or waste product of sugar manufacture;
- (i) To take steps for the increase of consumption of Eswatini sugar and the by-products or waste products of sugar manufacture in Eswatini and for ensuring that they reach the consumer through the most direct and economical channels;
- (j) To originate, carry on, direct and control propaganda in connection with the sale or consumption of Eswatini sugar and the by-products or waste products of sugar manufacture in Eswatini;

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- (k) To purchase, sell or otherwise deal in sugar and the by-products and waste products of sugar manufacture; and
- (l) To do all such things as may in the opinion of the Association be necessary, proper or advisable for the general advancement of the Eswatini Sugar Industry, or which may be necessary for or incidental or conducive to the attainment of any of the objects of the Association.

11. Each of the objects of the Association set out herein shall be construed as a separate and independent object and shall not in any way be altered, limited or restricted in its meaning or interpretation by reference to or inference from any other object.

12. The funds and property of the Association, whencesoever derived, shall be applied solely towards the promotion of the objects of the Association as set forth in this Constitution, and (save as is hereinafter provided for upon a dissolution of the Association) no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to the Members of the Association: Provided that nothing herein contained shall prevent the payment in good faith of remuneration to any person for services actually rendered to the Association or the reimbursement to any such person of any expenses (including travelling expenses) incurred by him on the Association's behalf or in connection with his duties.

13. Save to the extent provided in the Eswatini Sugar Industry Agreement, the Association in carrying out its objects and exercising its powers and functions, shall in no way discriminate between persons engaged in the Eswatini Sugar Industry or seeking to enter the same and all benefits and/or rights to be given or distributed to any section of the Eswatini Sugar Industry or any persons engaged therein or seeking to enter the same shall be applied on a uniform basis.

POWERS OF THE ASSOCIATION

14. The Association shall have all such powers as may be necessary for or incidental or conducive to the furtherance or achievement of all or any of its objects, and exercising any of its functions under the Eswatini Sugar Industry Agreement as amended from time to time, and, without derogating from the generality of the foregoing, shall have specific power —

- (a) to receive, administer and apply for the purposes of the Association all such revenues and moneys as may be raised for such purposes by levy, agreement or otherwise in the Eswatini Sugar Industry or any section thereof;
- (b) to purchase, take on lease or in exchange, or otherwise acquire movable and immovable property of every sort, including land, buildings, limited interests in land, shares, debentures and other interests in companies or corporations and other securities, and to hold, develop, improve, sell, let, exchange or otherwise deal in or with the same;
- (c) to borrow and raise money and to secure or discharge any debt or obligation of or binding on the Association in such manner as may be thought fit and in particular by mortgages and charges upon all or any of the immovable or movable property and assets (present and future) of the Association;
- (d) to lend money or grant credit facilities, with or without interest and with or without security, to such persons or bodies as the Association may deem fit, and in particular to members of the Association and their constituent

members and persons or bodies having dealings with the Association, and otherwise to assist or subsidise such members, constituent members, persons or bodies;

- (e) to guarantee, whether as surety or as surety and co-principal debtor or otherwise, or become liable for the payment of money or the performance of any obligation by any person or body, and generally to transact all kinds of guarantee business and to give any kind of indemnity;
- (f) to raise funds for the purposes of the Association by means of subscriptions, levies, donations or otherwise;
- (g) to open and operate bank accounts, or accounts with any building society or other deposit receiving institution, and to draw, make, accept, endorse, discount, negotiate, execute, and issue, and to buy, sell and deal in bills of exchange, promissory notes and other negotiable or transferable instruments;
- (h) to invest the surplus funds of the Association in such manner as may be deemed expedient until such time as they are required for the purposes of the Association;
- (i) to remunerate or reward any person for research or other work leading to the advancement of the objects of the Association, and to employ and pay such officials and servants of the Association as it may deem fit and to remunerate any person or body rendering service to the Association;
- (j) to represent the views of the Eswatini Sugar Industry to any governmental or other authority or any public body or official;
- (k) to inform any government or authority of the quantity of sugar to be produced season by season by sugar millers in Eswatini;
- (l) to nominate representatives for appointment to any statutory or other board, body or authority controlling, regulating or advising on any matter or issue affecting the Sugar Industry in Eswatini or any section thereof;
- (m) to promote and administer agreements between sugar millers and cane growers as to the distribution of proceeds from the sale of sugar and by-products and any other conditions regarding the delivery of cane;
- (n) to institute, conduct, defend, compromise or abandon any legal proceedings by or against the Association;
- (o) to submit to arbitration any claims made by or against the Association;
- (p) to decide on the persons or bodies, or classes of persons or bodies, or trades to whom rebates, and the amounts thereof, shall be made in order to meet competition from imported sugar, and/or to take other steps to meet such competition;
- (q) to institute or conduct any investigation, technical or otherwise, which may be in the interests of the Eswatini Sugar Industry;
- (r) to establish scholarships and bursaries, and to support or assist any educational or technical establishments whose activities may advance the interests of the Sugar Industry in Eswatini; and

- (s) to incur such expenditure as may be deemed necessary for the exercise of any of the aforesaid powers or the furtherance of any of the Association's objects.

PRESIDENT AND VICE-PRESIDENT

- 15.** The Association shall every year at the Annual General Meeting elect from the delegates a President and a Vice-President to hold office for the ensuing year.

GENERAL MEETING OF THE ASSOCIATION

- 16.** Meetings of the Association shall consist of Annual General Meetings and Special General Meetings.

Annual General Meetings.

- 17.** The first Annual General Meeting of the Association shall be held in respect of the portion of the financial year of the Association ending on the 30th day of April, 1965, and not more than six months after that date. Subsequent Annual General Meetings shall be held in respect of every financial year of the Association thereafter, not more than six months after the close thereof. Subject as aforesaid, the time, date and place for the holding of Annual General Meetings shall be fixed by the Council.

- 18.** The business of each Annual General Meeting shall be to receive and consider a Report by the Council on the working of the Association during the financial year, or portion of a financial year, in respect of which the meeting is held, together with the audited balance sheet, revenue and expenditure account and any other final accounts of the Association for such financial year, or portion of a financial year, to fix the remuneration of the Association's auditors for the said financial year, or portion of a financial year, to appoint auditors for the ensuing financial year, to receive and note appointments in terms of clause 32 of members of the Council and their general alternates to hold office until the conclusion of the next Annual General Meeting; to receive and note appointments in terms of clause 47 of members of the Marketing Executive Committee, and to do any other business of which special notice (setting out the terms of any resolutions to be proposed) has been given in the notice convening the meeting or which it may be competent to transact at an Annual General Meeting.

Special General Meetings.

- 19.** All general meetings of the Association, other than Annual General Meetings, shall be called Special General Meetings.

- 20.** The Council may convene a Special General Meeting whenever it deems fit and the President, or in his absence the Vice-President or the Secretary, shall convene a Special General Meeting as soon as reasonably practicable whenever either of the two members of the Association shall request him to do so for any stated purpose or purposes.

- 21.** Particulars of all business to be transacted at a Special General Meeting (including the terms of any resolutions to be proposed) shall be given in the notice convening the meeting and it shall not be competent to transact thereat any business of which notice has not been so given.

Notice of General Meetings.

22. The persons entitled to attend General Meetings of the Association shall be the delegates referred to in clause 8 above, each of whom shall be entitled to receive not less than seven nor more than twenty-one days' notice of every General Meeting:

Provided that —

- (a) thirty days' notice shall be given of every meeting at which any resolution for any alteration or addition to this Constitution or for the dissolution of the Association is to be proposed, and provided further that:—
- (b) in the case of an emergency the President (or, in the event of his absence or inability to act, the Vice-President) may convene a Special General Meeting on less than seven days' notice to transact any business other than business referred to in sub-clause (a) above, and
- (c) no delegate shall be entitled to notices of General Meetings unless the Association has been notified of his appointment by the member of the Association which has nominated and appointed him and been given an address at which such notices may be sent to him in the ordinary course of post.

PROCEEDINGS AT GENERAL MEETINGS

23. The President of the Association, or, failing him, the Vice-President, shall be entitled to take the Chair at all General Meetings of the Association. If neither the President nor the Vice-President shall be able or willing to preside at any meeting the delegates present may elect one of their number to take the Chair.

24. No business shall be transacted at any General Meeting unless a quorum is present. A quorum shall be eight delegates consisting of four delegates appointed by the Miller's Association and four delegates appointed by the Growers' Association present in each case in person or by proxy. If within half an hour from the time appointed for any General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or, if that day shall be a public holiday, the next business day, and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the delegates present in person or by proxy shall form a quorum.

25. Each delegate or his proxy shall have one vote at General Meetings.

26. All questions arising at General Meetings shall be decided only by a majority of votes consisting of at least two-thirds of the votes of all delegates present at the meeting in person or by proxy and including the votes of delegates or their proxies appointed by each of the two members of the Association; provided that if any General Meeting has stood adjourned for want of a quorum, questions arising at such adjourned meeting may be decided by a majority of votes consisting of at least two-thirds of all delegates present at the meeting in person or by proxy, whether or not such majority includes votes of delegates or their proxies appointed by each of the two members of the Association.

27. The President or Vice-President or other occupant of the Chair shall have no vote other than his vote as a delegate or as proxy for a delegate.

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28. Persons other than delegates or their proxies may attend General Meetings by consent of the Meeting but they shall not be entitled to speak thereat unless invited to do so and they shall not be entitled to vote.

COUNCIL OF THE ASSOCIATION

29. The business and affairs of the Association shall be administered by a Council consisting of eight members and an independent Chairman appointed by the Association at its Annual General Meeting, who shall not be a delegate of a member of the Association or have any interest directly or indirectly in the growing, milling or disposal of sugar cane or sugar in Eswatini. The Millers' Association and the Growers' Association shall each appoint four of the members of the Council and also two general alternates to act for and in the place of either or both of the members appointed on the nomination of the miller or Planters' Group on whose nomination they are appointed.

30. Of the four members of the Council and two general alternates appointed by the Millers' Association two members and one general alternate shall be appointed by it on the nomination of Mhlume (Eswatini) Sugar Company Limited, and two members and one general alternate shall be appointed by it on the nomination of Ubombo Ranches Limited.

31. Of the four members of the Council and two general alternates appointed by the Growers Association, two members and one general alternate shall be appointed by it on the nomination of its Mhlume Planters' Group, and two members and one general alternate shall be appointed by it on the nomination of its Big Bend Planters' Group.

32. The first members of the Council and first general alternates shall be appointed as soon as may be after the adoption of this Constitution and shall hold office until the first Annual General Meeting of the Association to be held in respect of the portion of the financial year of the Association ending on the 30th day of April, 1965. Thereafter the appointments of the members of the Council and their general alternates shall be effected annually by letter written under the authority of the member of the Association making the appointment and delivered to the Association at its Annual General Meeting. The members of the Council and general alternates appointed shall hold office from the conclusion of the Annual General Meeting at which their appointment is so notified until the conclusion of the next succeeding Annual General Meeting.

33. Casual vacancies caused through any member of the Council or any general alternate ceasing to hold office shall be filled by a new appointment from the member of the Association who appointed the member of Council or general alternate who has ceased to hold office. Such appointments shall be made by letter written under the authority of the member of the Association making the appointment and delivered to the Association at its office; and the persons so appointed shall hold office until the end of the next Annual General Meeting of the Association.

POWERS OF THE COUNCIL

34. The Council shall have full power and authority to conduct and manage all the business and affairs of the Association and to exercise all such powers as may hereinafter be conferred upon the Association or the Council or any committee thereof, except such powers as are in terms of this Constitution to be exercised by the Marketing Executive Committee of the

Association, and shall have power to co-opt experts to assist it whenever and for as long as it may deem fit, but such co-opted members shall act in an advisory capacity only and shall not be entitled to vote at meetings of the Council.

35. The Council shall annually and whenever else requested to do so by the Marketing Executive Committee determine the policy to be observed by the Marketing Executive Committee in exercising its powers and discharging its functions under this Constitution.

36. The Council may form sub-Committees of its own members to consider any matter and make recommendations to the Council thereon and/or to act for the Council in any matter.

37. The Council shall have power to delegate any of its powers or functions to any such sub-Committee as aforesaid or to any member or members of the Council.

PROCEEDINGS OF THE COUNCIL

38. The members of the Council may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they may deem fit:

Provided that —

- (a) every member of the Council and every general alternate shall be entitled to receive notice of every meeting of the Council,
- (b) unless the Council shall otherwise direct a meeting of the Council shall be convened by the Chairman, or failing him, the Secretary, at least once in every quarter, and
- (c) the Chairman, or the Secretary shall convene a meeting whenever he is requested to do so by either of the members of the Association or by any two members of the Council or their general alternates.

39. General alternates may attend meetings of the Council in addition to the members to whom they are alternates.

40. Persons who are not members of the Council or their general alternates may attend meetings of the Council with the consent of the Council.

41. The Chairman shall take the Chair at all meetings of the Council. If the Chairman shall be unable to preside at any meeting, the members of the Council present may elect one of their number to take the Chair.

42. No business shall be transacted at any meeting of the Council unless a quorum is present. A quorum shall be four members present in person or represented by their general alternates, and consisting of one member appointed by the Millers' Association on the nomination of Mhlume (Eswatini) Sugar Company Limited, one member appointed by the Millers' Association on the nomination of Ubombo Ranches Limited, one member appointed by the Growers' Association on the nomination of its Mhlume Planters' Group and one member appointed by the Growers' Association on the nomination of its Big Bend Planters' Group. If within half an hour from the time appointed for a meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or, if that day shall be a public holiday, the next business day; and if at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members of the Council present and/or general alternates present and representing absent members shall be a quorum.

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43. At meetings of Council the members appointed by the Millers' Association shall collectively have one vote and the members appointed by the Cane Growers' Association shall collectively have one vote.

44. All questions arising at meetings of the Council shall be decided only by a majority of votes.

45. The Chairman ordinarily shall have no vote but in the case of an equality of votes on any point the Chairman may at his discretion rule that a second meeting to deal with the same subject be called as and when he may decide and at such meeting he shall have the right if he so wishes to cast a vote.

MARKETING EXECUTIVE COMMITTEE

46. The Association shall have a Marketing Executive Committee consisting of four members appointed by the Millers' Association and two members appointed by the Growers' Association. Such members may, but need not, also be members of the Council.

47. The first members of the Marketing Executive Committee shall be appointed as soon as may be after the adoption of this Constitution, and shall remain in office until the Annual General Meeting of the Association to be held in respect of the financial year of the Association ending on the 30th day of April, 1966. At the said Annual General Meeting two of the members appointed by the Millers' Association and one of the members appointed by the Growers' Association shall retire, and new appointments to fill the vacancies so caused shall be made by the members of the Association which appointed the retiring members. The members of the Marketing Executive Committee shall determine by agreement between themselves which of them shall so retire, and, failing such agreement, the members to retire shall be settled by drawing lots. The new appointments shall be effected by letter written under the authority of the member of the Association making the appointment and delivered to the Association at the said Annual General Meeting. Thereafter at every subsequent Annual General Meeting of the Association the two members appointed by the Millers' Association and the member appointed by the Growers' Association who have been longest in office shall retire, and new appointments to fill the vacancies so caused shall be made in like manner by the members of the Association entitled to fill the vacancies. Retiring members shall in all cases be eligible for re-appointment.

48. Each of the member Associations required to appoint members of the Marketing Executive Committee shall also be entitled to appoint an alternate for each member of the Marketing Executive Committee appointed by them, to act for and in the place of such member during his absence or own inability to act.

49. Each of the member Associations required to appoint members of the Marketing Executive Committee shall have the right to fill any casual vacancy in the number of members appointed by it caused by any such member ceasing to hold office for any reason, by appointing a new member to fill the vacancy so caused. Such appointments shall be made by letter written under the authority of the member of the Association making the appointment and delivered to the Association at its office and the persons so appointed shall hold office until such time as the member of the Marketing Executive Committee whose place they take would have retired in terms of clause 47.

50. The Marketing Executive Committee shall have power to co-opt experts to assist it whenever and for as long as it may deem fit, but such co-opted members shall act in an advisory capacity only and shall not be entitled to vote at meetings of the Committee.

POWERS OF THE MARKETING EXECUTIVE COMMITTEE

51. The Marketing Executive Committee shall act only in the name and *for and on behalf of* the Association and shall be vested with all the powers of the Association relating to the purchase, marketing, sale and disposal of Eswatini sugar and the purchase, marketing, sale and disposal of the by-products of sugar manufactured in Eswatini:

Provided however that —

- (a) the Council shall annually and whenever else requested to do so by the Marketing Executive Committee determine the general policy to be observed by the Marketing Executive Committee in exercising such powers, and the Marketing Executive Committee shall not act otherwise than in accordance with such general policy except with the approval of a resolution of the Council first had and obtained;
- (b) the Marketing Executive Committee shall not act in any way which would be a departure from selling at ruling world prices in accordance with normal practice, except with the approval of a resolution of the Council first had and obtained;
- (c) the Marketing Executive Committee shall sell forward on Terminal Markets only in pursuance of a policy approved by a resolution of the Council first had and obtained;
- (d) the conclusion of any British Commonwealth, International or other sugar agreement or quota arrangement or any long term agreement relating to the sale or disposal of Eswatini sugar or the by-products or waste products of sugar manufacture in Eswatini shall require the specific authority of a resolution of the Council.

52. The Marketing Executive Committee shall not have power to make any allocation between mills of any quota obtained under any British Commonwealth, International or other sugar agreement, nor shall it have any power to alter any existing allocation between mills of any quota, which powers shall be reserved to the Council.

53. The Marketing Executive Committee shall have power to employ and pay out of the funds of the Association such experts, agents, brokers and staff as it may deem necessary for the purpose of carrying out its functions and shall have power to delegate the execution of any of its decisions to such persons or to any of its members or any of the members of the Council:

Provided however that any two members of the Committee together may require that any exceptional expenditure be referred to Council for approval.

PROCEEDINGS OF THE MARKETING EXECUTIVE COMMITTEE

54. The members of the Marketing Executive Committee may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they may deem fit:

Provided that —

- (a) every member of the Committee and every alternate to such member shall be entitled to receive notice of every meeting of the Committee, and
- (b) the Secretary may at any time, and on the request of any member shall, summon a meeting of the Committee.

55. Alternates to members of the Committee may attend meetings of the Committee in addition to the members whose alternates they are, but they shall not be entitled to vote thereat except in the absence and in the place of the members whose alternate they are.

56. Persons who are not members of the Committee or their alternates may attend meetings of the Committee with the consent of the Committee but shall not be entitled to vote thereat.

57. The Members of the Committee may elect one of their number to take the Chair at any meeting of the Committee.

58. No business shall be transacted at any meeting of the Marketing Executive Committee unless a quorum is present. A quorum shall be three members present in person or represented by their alternates and shall consist of two of the members appointed by the Millers' Association and one of the members appointed by the Growers' Association. If within half an hour from the time appointed for a meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place, or, if that day shall be a public holiday, the next business day, and the Secretary shall notify all members of the Committee and their alternates of such adjournment. If at such adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present and/or the alternates present and representing absent members shall be a quorum.

59. Each member of the Committee (or his alternate in his absence) shall have one vote at meetings of the Committee.

60. All questions arising at meetings of the Committee shall be decided by a simple majority of votes.

61. In the case of an equality of votes the Chairman shall not have a second or casting vote.

DISQUALIFICATION OF DELEGATES TO THE ASSOCIATION, MEMBERS OF THE COUNCIL AND
MEMBERS OF THE MARKETING EXECUTIVE COMMITTEE

62. Any delegate appointed to represent a member in the Association and any member of the Council or the Marketing Executive Committee shall automatically be disqualified from and shall vacate his office as such delegate or member of the Council or the Marketing Executive Committee if at any time he shall —

- (a) become insolvent,
- (b) be found lunatic or become of unsound mind,
- (c) resign his office by notice in writing to the Association, or
- (d) be called upon in writing to vacate his office by the member Association which appointed him.

63. If any member of the Council shall, without leave of absence from the Council, fail to be present in person or be represented by a general alterante at three consecutive meetings of the Council, he shall automatically vacate his office as a member of the Council.

SECRETARY

64. The Council shall appoint a Secretary of the Association, who shall also be Secretary of the Council and the Marketing Committee, at such remuneration and upon such other terms and conditions as it may deem fit. The Secretary shall perform such duties and functions as are assigned to the Secretary in this Constitution and such further functions and duties as the Council may from time to time assign to him. He shall also attend all meetings of the Association, the Council and the Marketing Executive Committee but shall not be entitled to vote thereat.

MINUTES

65. It shall be the responsibility of the Secretary, and failing him of the meeting concerned, to ensure that proper Minutes in customary form are kept in respect of all General Meetings of the Association, and all meetings of the Council, the Marketing Executive Committee and any sub-committee of the Council that may from time to time be formed. Such Minutes, including the terms of all resolutions passed thereat, shall be kept in a Minute Book or Minute Books to be maintained in customary form, and shall always be open to the inspection of any member of the Council.

FINANCIAL YEAR

66. The financial year of the Association shall end on the 30th day of April in each year.

BOOKS OF ACCOUNT AND AUDITORS

67. It shall be the responsibility of the Council to ensure that proper books of account are kept in customary form in respect of the transactions, property and funds of the Association. The said books of account shall be kept at such place as the Council may determine and shall always be open to the inspection of any member of the Council.

68. The said books and the accounts of the Association shall be audited for and in respect of the portion of the financial year ending on the 30th day of April, 1965 by Messrs. Alex. Aiken and Carter of Mbabane, who shall be the first auditors of the Association. Thereafter and in respect of each succeeding financial year of the Association they shall be audited by such auditors as may be appointed at the Annual General Meeting held in respect of the preceding financial year, or portion thereof. No delegate or member of the Council or general alternate shall be eligible for appointment as auditor. The auditors shall have right of access at all reasonable times to the books, vouchers and records of the Association and shall be entitled to require from the Association, its officials, servants and representatives all such information and explanations as may be necessary for the performance of their duties.

LIMITATION OF LIABILITY OF MEMBERS OF THE COUNCIL,

MARKETING EXECUTIVE COMMITTEE AND OFFICIALS, AND INDEMNITY

69. No member of the Council or of the Marketing Executive Committee or alternate and no official of the Association shall be liable to the Association for any act, omission, neglect or default by any other such member, alternate or official, nor for any loss occasioned by any

negligence, error of judgment or oversight on his own part, nor for any other loss, damage, or misfortune whatever which may happen in the execution of the duties of his office or in relation thereto, unless the same shall happen through his own dishonesty; and every such member, general alternate and official shall be indemnified by the Association against, and it shall be the duty of the Council to pay out of the funds of the Association all costs, losses and expenses which any such member, general alternate or official may incur or become liable for by reason of any act or omission by him in his capacity as such. Any liability of the Association under this clause may be met out of funds to be raised by the Association by such levies as it may be entitled to impose on persons engaged in the Sugar Industry in Eswatini and shall for such purposes be deemed to be an Industry Obligation.

DISSOLUTION OF THE ASSOCIATION

70. The Association may be dissolved at any time by a resolution passed in accordance with the provisions of this Constitution at a Special General Meeting of which at least thirty days' notice has been given. Upon the passing of such a resolution the Council shall pay all outstanding debts of the Association (liquidating such of its assets and property as may be necessary in order to do so) and dispose of all surplus assets or moneys of the Association thereafter remaining in the manner directed by clause 71 below. The members of the Council shall remain in office until completion of their duties under this clause, and the dissolution of the Association shall not be complete until such duties have been discharged.

DISPOSAL OF SURPLUS ASSETS AND MONEYS

71. Any surplus assets and moneys of the Association which may upon the dissolution thereof remain after payment of all indebtedness of the Association shall be given or transferred to some other institution or institutions having objects similar to the objects of the Association to be determined by a resolution passed at a Special General Meeting of the Association at or before the time of dissolution, or, failing such determination, to the members of the Association in equal shares.

ALTERATIONS AND ADDITIONS TO THIS CONSTITUTION

72. The provisions of this Constitution may be altered or added to only by a resolution passed in terms of this Constitution at a Special General Meeting of the Association of which not less than thirty days' notice has been given.

Interpretation.

73. In this Constitution unless the context otherwise indicates all words and phrases shall have the meanings assigned to them respectively in the Eswatini Sugar Industry Agreement in force from time to time.

For and on behalf of

THE ESWATINI SUGAR MILLERS' ASSOCIATION,

.....

For and on behalf of

THE ESWATINI CANE GROWERS' ASSOCIATION,

.....

SCHEDULE "F"

- (1) The price payable to growers per ton of sucrose delivered shall be calculated in terms of the following formula:

$$\text{Price per ton of sucrose} = \frac{A + \left\{ [P - (A + B)] \times \frac{C \times 10\%}{(C \times 10\%) + (D \times 12 \frac{1}{2} \%)} \right\}}{R}$$

Where:

P = the price per ton of 96° pol equivalent sugar actually paid to each miller in terms of clause 45.

[Amended G.N. 15/1968.]

A = The notional cost of producing the cane required to manufacture one ton of 96° pol sugar calculated by multiplying the notional cost of producing one ton of cane by the rolling three year weighed average cane/96° pol sugar ratio of the two mills.

B = The notional cost of manufacturing one ton of 96° pol sugar.

C = The notional capital employed to produce the cane required to manufacture one ton of 96° pol sugar calculated by multiplying the notional capital employed to produce one ton of cane by the rolling three year weighted average cane/96° pol sugar ratio of the two mills.

D = The notional capital employed to manufacture one ton of 96° pol sugar.

R = The rolling three year weighted average sucrose /96° pol sugar ratio of the two mills.

Provided that the weighted average cane/96° pol sugar ratio and the weighted average sucrose/96° pol sugar ratio shall be calculated:

- (a) For the 1965/66 season from performance figures in that season, and
 - (b) For the 1966/67 season from performance figures in the two seasons 1965/66 and 1966/67.
- (2) (a) The notional cost of producing one ton of cane shall be the "cost of producing a ton of cane by a reasonably efficient grower" deduced by the Cane Prices Review Committee from the accounts of cane growers and miller-cum-planters.
- (b) The notional cost of manufacturing one ton of 96° pol sugar shall be the "cost of manufacturing one ton of 96° pol sugar by a reasonably efficient miller" deduced by the Cane Prices Review Committee from the accounts of 96° pol sugar by a reasonably efficient miller" deduced by the Cane Prices Review Committee from the accounts of millers.

[ISSUE 1]

- (c) The notional capital employed respectively by the grower to produce one ton of cane and the miller to manufacture one ton of 96° pol sugar shall be the capital employed by a reasonably efficient grower and miller respectively as deduced by the Cane Prices Review Committee from the accounts of growers (including miller-cum-planters) and millers.
- (3) (a) Notional costs and capital employed shall in the first instance be deduced from three years accounts available at the time of approval of this Agreement (1966) and shall be adjusted, if necessary, as the result of reviews undertaken separately in each year over the succeeding two years; provided however that the period over which the annual reviews are undertaken may be extended by agreement between the Millers' and Growers' Associations. Subsequently the review shall be undertaken triennially unless either the Growers' Association or the Millers' Association should be of the opinion that circumstances had arisen which would justify an interim review.
- (b) The aggregate equivalent tons of 96° pol sugar shall be calculated by adding together:

- (i) in the case of export sugars

$$\frac{\text{tons tel quel} \times \frac{\text{actual polarisation}}{96^\circ}}{\%} \text{ of the sugar produced.}$$

- (ii) golden brown as in (i).

- (iii) "refined" and "mill white" by multiplying tons tel quel x 1.07.

- (4) The due proportion of the net molasses proceeds at mill and the value of any other product as referred to in Clause 46(1)(b) and 46(1)(c) respectively shall be the percentage arrived at as follows:

$$\frac{A + \left\{ [P - (A + B)] \times \frac{C \times 10\%}{(C \times 10\%) + (D \times 12\frac{1}{2}\%)} \right\}}{P} \times 100$$

where the symbols have the same definition as in sub-clause (1) above.

PART II

[Section 7.]

Clauses not to be altered or amended without the prior written consent of the Minister:

7,	8,	9,	10,	11,	13,	14,
15,	16,	17,	18,	19,	20,	21,
22,	23,	24,	25,	28,	32,	33.