

**CONSTITUTION**  
**OF POTATOES SOUTH AFRICA VOLUNTARY /**  
**AARTAPPELS SUID-AFRIKA VRYWILLIG**

**2015**

## INDEX

|   |           |
|---|-----------|
| <b>CHAPTER ONE: THE PURPOSE OF THE CONSTITUTION</b>   | <b>5</b>  |
| <b>CHAPTER TWO: NAME OF THE ORGANISATION</b>  | <b>5</b>  |
| <b>CHAPTER THREE: LEGAL STATUS</b>  | <b>6</b>  |
| <b>CHAPTER FOUR: OBJECTIVES</b>   | <b>6</b>  |
| <b>CHAPTER FIVE: POWERS OF POTATOES SOUTH AFRICA VOLUNTARY/AARTAPPELS<br/>SUID-AFRIKA VRYWILLIG</b> | <b>8</b>  |
| <b>CHAPTER SIX: LINES OF AUTHORITY</b>  | <b>10</b> |
| <b>CHAPTER SEVEN: CONGRESS</b>  | <b>10</b> |
| <b>CHAPTER EIGHT: NATIONAL COUNCIL</b>  | <b>13</b> |
| <b>CHAPTER NINE: MANAGEMENT COMMITTEE</b>   | <b>21</b> |
| <b>CHAPTER TEN: NATIONAL CHAIRPERSON</b>  | <b>22</b> |
| <b>CHAPTER ELEVEN: REGIONAL MANAGERMENTS</b>  | <b>25</b> |
| <b>CHAPTER TWELVE: THE CHIEF EXECUTIVE OFFICER</b>  | <b>27</b> |
| <b>CHAPTER THIRTEEN:FUNCTIONS OF THE SECRETARY</b>  | <b>28</b> |
| <b>CHAPTER FOURTEEN: FINANCING, ACCOUNTING AND AUDITING</b>   | <b>29</b> |
| <b>CHAPTER FIFTEEN: DISPUTE RESOLUTION</b>  | <b>30</b> |
| <b>CHAPTER SIXTEEN: GENERAL</b>   | <b>31</b> |
| <b>CHAPTER SEVENTEEN: AMENDMENTS TO THIS CONSTITUTION</b>   | <b>32</b> |

**CHAPTER EIGHTEEN: DISSOLUTION OR WINDING UP**

## DEFINITIONS

|                                 |  |
|---------------------------------|--|
| <b>Committee</b>                | means any committee, sub-committee, standing committee, functional committee, forum, workgroup etc. formed by the Organisation.  |
| <b>Congress</b>                 | means the highest authority within the Organisation.   |
| <b>Delegate</b>                 | means a potato producer nominated by a nomination body or grouping entitled to appoint delegates to attend meetings of the Congress.   |
| <b>Farmer</b>                   | means a person or entity whose main business is that of primary agricultural activities.   |
| <b>Transformation Programme</b> | means any programme aimed at transformation instituted by the Organisation from time to time.  |
| <b>Management Committee</b>     | means the authority acting on behalf of the Organisation when the National Council is not in session.  |
| <b>Member</b>                   | means: <ol style="list-style-type: none"> <li>1. a potato producer who is obliged to pay statutory levies in terms of the Marketing of Agricultural Products Act 24/1996, or in the absence of such obligation is prepared to pay the voluntary levies as determined from time to time by Congress of the Organisation; and</li> <li>2. can either be a natural person; or a Trust/legal entity (as represented by its nominated representative); and</li> <li>3. who endorses the objects of the Organisation.</li> </ol> |
| <b>National council</b>         | means the authority acting on behalf of the Organisation when Congress is not in session.  |
| <b>Potato producer</b>          | means a farmer who produces potatoes for marketing: <ol style="list-style-type: none"> <li>1. in the fresh form (also called table or ware potatoes); or</li> <li>2. for processing; and/or</li> <li>3. for seed.</li> </ol>   |
| <b>Organisation</b>             | means Potatoes South Africa Voluntary.   |
| <b>Upcoming potato producer</b> | means a potato producer who participates or qualifies for participation in the Transformation Programme of the Organisation.   |
| <b>Black Person/s</b>           | black person/s as defined in the Employment Equity Act of 1996.  |
| <b>Production area</b>          | each of the production areas of Sandveld; Ceres; Southern Cape; South Western Cape; Eastern Cape; North Eastern Cape; Northern Cape; Kwazulu-Natal; Western Free State; Eastern Free State; South Western Free State; Mpumalanga; Limpopo; North West; Gauteng; and Loskop Valley; - each of these production areas  |

|                               |  |
|-------------------------------|--|
|                               | consisting of the magisterial districts as indicated on Annexure "A" attached hereto or any other production area that maybe identified by the Organisation. |
| <b>Northern region</b>        | an area consisting of the Limpopo, Mpumalanga, Gauteng and Loskop Valley production areas.   |
| <b>Eastern region</b>         | an area consisting of the Kwazulu-Natal, Eastern Free State and North Eastern Cape production areas.   |
| <b>Western region</b>         | an area consisting of North West, Northern Cape, Western Free State and South Western Free State production areas.   |
| <b>Southern region</b>        | an area consisting of the Sandveld, Eastern Cape, Ceres, Southern Cape and South Western Cape production areas.  |
| <b>Southern district</b>      | an area consisting of Western Cape, Sandveld, Ceres, Southern Cape and South Western Cape production areas.  |
| <b>South Eastern district</b> | an area consisting of the North Western Cape and Eastern Cape production areas.  |
| <b>Eastern district</b>       | an area consisting of the Kwazulu-Natal production area.   |
| <b>Central district</b>       | an area consisting of the production areas that do not form part of the Southern District, South Eastern District or Eastern District.                       |
| <b>Region</b>                 | the Eastern, Western, Northern and Southern Regions and/or any other regions identified by the Organisation.   |
| <b>District</b>               | the Southern District, the South Eastern District, the Eastern District and the Central District or any other district identified by the Organisation.       |

## **CHAPTER ONE: THE PURPOSE OF THE CONSTITUTION**

- 1.1 The purpose of this constitution is to :
- 1.1.1 provide a constitution for the Organisation as a voluntary organization not for gain owned by its members and established as a legal entity in terms of its constitution;
  - 1.1.2 provide an institutional framework to implement national, regional and workplace strategies;
  - 1.1.3 provide a framework for the functioning of a voluntary representative autonomous national organisation for the potato producers of the Republic of South Africa.

## **CHAPTER TWO: NAME OF THE ORGANISATION**

- 2.1 The name of the organisation shall be Potatoes South Africa Voluntary. In Afrikaans the Organisation will be known as Aartappels Suid-Afrika Vrywillig.

- 2.2 The Organisation was previously known as the Potato Producers Organisation. In Afrikaans the Organisation was previously known as the Aartappel Produsente Organisasie.

### **CHAPTER THREE: LEGAL STATUS**

- 3.1 The Organisation is an autonomous specialised organisation not for gain owned by its members and established as a legal entity in terms of its constitution.
- 3.2 The Organisation is a voluntary organisation with an identity and existence entirely separate and distinct from that of its office bearers or members and shall continue to exist notwithstanding changes in the composition of the membership or office bearers. As such, the Organisation may sue or be sued in its own name and is capable of having its own rights, obligations and duties.
- 3.3 The Organisation is an organisation not for gain and the income and property of the Organisation, where so ever it may be derived, shall be applied solely towards the promotion of its objectives as recorded herein and no portion thereof shall be paid, divided, distributed or transferred directly or indirectly in any manner whatsoever to the members of the Organisation. This notwithstanding, nothing shall prevent the payment in good faith of reasonable remuneration to any office bearer of the Organisation or to any member thereof in return for any services rendered by such person to the Organisation in accordance with the objectives as laid out in this Constitution.
- 3.4 The Organisation may authorize any person or persons to act on behalf of it and to sign all such documents and take all such steps as may be necessary in connection with any proceedings at law brought by or against the Organisation.

### **CHAPTER FOUR: OBJECTIVES**

The objective of the Organisation is to serve the interest of the Potato Industry in South Africa and includes, but is not limited to:

- 4.1 to achieve for the potato producer the best possible economic and social position in the South African economy by objectively serving as the link between the organisation (producers, their leaders and organization) and all bodies (authorities as well as private) exerting and influence on the potato industry;
- 4.2 to serve as the mouthpiece of the South African potato producers;

- 4.3 to participate on behalf of its members in decision-making and other processes affecting the interests of the potato industry;
- 4.4 to ensure by joint conduct the establishment of the necessary facilities and services for the potato industry and to organize the industry and to create the required types of services towards this end;
- 4.5 to instigate transformation programmes for the benefit of the potato industry including, but not limited to, upcoming potato producers;
- 4.6 to recognise the interest of Black potato producers (including Black upcoming potato producers) by providing for such potato producers' interest on the National Council of the Organisation;
- 4.7 to develop and promote solidarity and a spirit of co-operation and belonging amongst all interested parties in the potato industry;
- 4.8 to strive towards the effective production and marketing of potatoes in South Africa;
- 4.9 to limit any business activity or services to matters and services which promote the potato industry of South Africa;
- 4.10 to structure any business activity or service in such a manner that financial interests and results are transparent and are made available to all interested parties independent of the Organisation;
- 4.11 to convey the co-ordinated opinion of the potato producers to the Government or other authorities or other non-governmental organizations and to co-operate with them in all matters affecting the well-being of the potato industry, the solving of problems and to effect the required legislation;
- 4.12 to strive for the systematic development of an environment friendly outlook of the potato industry, including, *inter alia*, the preservation of the soil and water resources, the maintenance and improvement of the fertility of the land and improvement of production and marketing methods;
- 4.13 to establish, promote and maintain optimum understanding between the potato producers and other interest groups in the potato industry; and
- 4.14 to deal with all members strictly on their merits and never from a party political point of view in the pursuit of the stated objects.

## CHAPTER FIVE: POWERS OF THE ORGANISATION

- 5.1 The Organisation has all such powers necessary to enable it to achieve its objectives and perform duties and functions together with such other powers as may be conferred upon it by the appropriate Acts. In addition, the Organisation must perform its functions in accordance with this Constitution.
- 5.2 Subject to any limitations which may be imposed by the appropriate acts and this Constitution, the Organisation may delegate to its members, employees, committees, or the chief executive officer any of its powers, duties and functions provided that:
- 5.2.1 the Organisation cannot delegate the power of delegation; and
- 5.2.2 any delegation must be recorded in the Organisation's minutes and given in writing and must specify:
- The period for which it is valid; and
  - Any limitations or conditions on the delegation.
- 5.3 The Organisation may revoke or vary a delegation at any time and may vary or set aside any decision made under any delegation.
- 5.4 The Organisation may continue to exercise or perform a power, duty or function which it has delegated.
- 5.5 The Organisation remains responsible for all actions taken under a delegation.
- 5.6 The Organisation shall, for purposes of achieving its objectives and performing its duties and functions establish such committees as may be necessary for this purpose; provided that decisions of such committees are subject to the approval of the National Council before such decisions may be executed or pursued unless the National Council has given prior approval to this effect beforehand and may dissolve any such committee or may amend or revoke its terms of reference.
- 5.7 Notwithstanding the above, the Organisation shall have authority, duties and powers to –
- 5.7.1 hold, purchase or otherwise acquire movable or immovable property, to sell, let or lease, to pledge and/or mortgage it, to give it as security and/or in any other way to alienate or to dispose of it and to give or to acquire any real or other right in respect thereof and in general to enter into any transaction in respect thereof;



- 5.7.2 put out on loan and/or in any other way to invest with registered financial institutions, as defined in Section 1 of the Financial Institution (Investment of Funds) Act, 1984 and in shares listed on a licenced stock exchange as described in the Stock Exchange Control Act, 1985 (Act No. 1 of 1985) funds or money at its disposal;
- 5.7.3 open bank accounts, deposit funds, borrow money whether against security or not, and to draw or overdraw thereon;
- 5.7.4 institute and to defend legal proceedings and to submit any dispute to arbitration and in respect of such legal proceedings or arbitration and any commission of enquiry, to appoint and remunerate legal practitioners as may be necessary;
- 5.7.5 receive and accept donations and/or contributions of any nature;
- 5.7.6 indemnify office bearers and employees in respect of any loss or damage which they may incur in the course of their employment and to enter into fidelity bond policies for persons dealing with the monies of Organisation;
- 5.7.7 appoint and dismiss employees and advisors;
- 5.7.8 remunerate persons in cash for services rendered to the Organisation;
- 5.7.9 pay gratuities and establish pension schemes, profit sharing plans and other incentive schemes for the benefit of its officials and employees;
- 5.7.10 subsidies, print, procure the printing of, publish and distribute newspapers, magazines, circulars and other publications for the promotion of the objects of the Organisation;
- 5.7.11 present a co-ordinated view of potato producers on matters pertaining to their interest to Government or other bodies, and to co-operate with them towards solving problems and drafting legislation and obtain representation on such Government and other bodies;
- 5.7.12 affiliate to such organisations on mutually acceptable conditions as approved by congress;
- 5.7.13 make recommendations to Government and other bodies pertaining to levies on all potato producers for purposes of transformation, research, generic marketing and information service or such other purposes as the Executive Council may determine; and

- 5.7.14 if, should it become necessary, determine membership fees and/or voluntary levies payable to the Organisation.
- 5.8 Notwithstanding anything to the contrary, the Organisation shall not be allowed to enter into any transaction to which the value exceeds the value of the assets of the Organisation at any given time, including membership fees as payable from time to time.

## **CHAPTER SIX: LINES OF AUTHORITY**

- 6.1 The lines of authority of the Organisation shall consist of –
- 6.1.1 Congress.
- 6.1.2 National Council.
- 6.1.3 Management Committee.
- 6.1.4 Regional managements which shall act on behalf of the potato producers of a specific production area in respect of matters affecting the potato producer in only such production area; provided that matters also affecting other production areas shall be referred to the National Council for further action.

## **CHAPTER SEVEN: CONGRESS**

### **7.1 Authority**

Congress is the highest authority within the Organisation in respect of strategic policy matters related to the industry; matters of an internal nature; and the exercise of the powers and the administration of the Organisation.

### **7.2 Composition**

The existing National Council shall determine the number of delegates to a subsequent Congress on the following basis:

- 7.2.1 A number to be determined consisting of delegates from respective production areas by allocating to each production area a number of delegates pro rata to the total production of that production area in

relation to the total production of all the production areas in total but furthermore on the proviso that every production area shall be allocated at least one delegate.

- 7.2.2 A number consisting of black members with the proviso that at least one black member shall be nominated from each district.
- 7.2.3 At least one delegate representing the seed producers and one delegate representing the processing producers as nominated by the National Council.
- 7.2.4 That only these delegates have voting rights.

### 7.3 **Quorum**

Half plus one of the particular delegates having the vote attending the Congress shall be a quorum.

### 7.4 **Functions of Congress**

The functions of Congress shall be:

- 7.4.1 The consideration, discussion and approval of the annual financial statements, auditor's report and report of the National Council.
- 7.4.2 The election of the Chairperson and the National Council.
- 7.4.3 The appointment of an auditor and the approval of his fees.
- 7.4.4 The transaction of any other matters which has been tabled for consideration by the Congress.
- 7.4.5 To appoint the Audit Committee representative who will be a member of the National Council.

### 7.5 **Rules of Congress**

- 7.5.1 Congress shall meet every 2 (two) years at a place and on a date which has been determined at least 90 (ninety) days in advance by the National Council.
- 7.5.2 The Organisation shall give each body or grouping which may nominate delegates at least 60 (sixty) days prior notice of the date and place of the meeting of Congress and the composition of the Congress.

- 7.5.3 At least 30 (thirty) days prior to the Congress each nominating body and grouping shall have a list of the names and addresses of its delegates available at the head office of the Organisation; provided that in the event of the unavoidable absence of a delegate, the particular nominating body or grouping may, up to the opening of Congress, nominate an alternate in writing.
- 7.5.4 Each body or grouping which may send a delegate to the Congress shall be entitled to submit draft proposals for possible inclusion in the Congress agenda; provided that –
- 7.5.4.1 the draft proposals shall reach the Organisation at least 45 (forty-five) days prior to the date of the Congress or an earlier date prior to the meeting of the Management Committee, which shall act as the planning committee, of which date written notice has been given; and
- 7.5.4.2 all draft proposals be referred to the National Council or to the Management Committee when the National Council is not in session.
- 7.5.5 If the majority of the National Council so resolve at a duly constituted meeting, a special Congress shall be convened; provided that in each case due notice together with particulars of the purpose, place, date and time of the special Congress shall be posted to each nominating body or grouping entitled to appoint delegates at least 30 (thirty) days prior to the date on which the Congress is to be held.
- 7.5.6 Voting shall take place by means of a show of hands; provided that the Chairperson may determine whether voting on a particular issue shall be by secret ballot and shall so determine if at least 7 (seven) delegates present in person so require; provided further that if a matter concerns the election of a member as the Chairperson of the National Council, voting shall take place by secret ballot after such person has in writing confirmed his or her availability, and has the support of at least two secondants.
- 7.5.7 The Chairperson of the Organisation shall preside as Chairperson at Congress.
- 7.5.8 Proceedings of meetings shall be conducted in accordance to the proceedings prescribed by the Company Act of 2008 for meetings of shareholders.

## CHAPTER EIGHT: NATIONAL COUNCIL

### 8.1 Constitution of the National Council:

8.1.1 The National Council shall be constituted from the members of the Organisation as follows:

8.1.1.1 A Chairperson, elected by Congress;

8.1.1.2 the chief executive officer, in an *ex officio* capacity without the right to vote on meetings of the National Council;

8.1.1.3 9 (nine) members as follows:

8.1.1.3.1 3 (three) from the Northern region consisting of:

8.1.1.3.1.1 2 (two) from the Limpopo production area as nominated by the Limpopo production area; and

8.1.1.3.1.2 1 (one) from either the Mpumalanga production area, Gauteng production area or Loskop production area as elected by the delegates representing these areas at Congress;

8.1.1.3.2 2 (two) from the Eastern region consisting of:

8.1.1.3.2.1 1 (one) from the Eastern Free State production area as nominated by the Eastern Free State production area; and

8.1.1.3.2.2 1 (one) from either the Kwazulu-Natal production area or North Eastern Cape production area as elected by the representatives of these

two areas at Congress;

8.1.1.3.3 2 (two) from the Western region consisting of:

8.1.1.3.3.1 1 (one) from the Western Free State production area as nominated by the Western Free State production area; and

8.1.1.3.3.2 1 (one) from either the North West production area, Northern Cape production area or South Western Free State production area as elected by the representatives of these areas at Congress;

8.1.1.3.4 2 (two) from the Southern region consisting of:

8.1.1.3.4.1 1 (one) from the Sandveld production area as nominated by that area; and

8.1.1.3.4.2 1 (one) from either the Eastern Cape production area, Ceres production area, Southern Cape production area or South Western Cape production area as elected by the representatives of those production areas at Congress;

8.1.1.4 1(one) representative from the seed growers being the Chairperson of the National Seed Potatoes Growers Committee;

8.1.1.5 1(one) potato producing representative from the processing environment being nominated by the National Council, if necessary in the event that there is no producer representing the processing environment;

8.1.1.6 4 (four) black members being:

8.1.1.6.1 1 (one) from the Southern district nominated by the black members of the Southern district;

8.1.1.6.2 1 (one) from the South Eastern district nominated by the black members of the South Eastern district;

8.1.1.6.3 1 (one) from the Eastern district nominated by the black members of the Eastern district;

8.1.1.6.4 1 (one) from the Central district nominated by the black members of the Central district.

8.1.1.7 1 (one) member as nominated by Congress, to serve as a member of the Audit Committee.

8.1.2 In the process of constituting the National Council the following provisions shall apply;

8.1.2.1 The Chairperson shall be non-executive and non-aligned. If therefore, the Chairperson already represents a production area, region or district on the National Council, a substitute for that area, region or district shall be nominated to the National Council in accordance with the provisions of Article 8.1.1.3 by the regional management of the production area concerned;

8.1.2.2 If a member of the National Council terminates his membership, he shall forthwith be substituted by a nomination by the particular regional management or as by the specific nominating sector;

8.1.2.3 If a member of the National Council stop producing potatoes he shall resign with immediate effect and he shall forthwith be substituted by a nomination by the particular regional management or by the specific nominating sector; and

8.1.2.4 If a member of the National Council is not elected to the regional management of the production area concerned, he shall conclude his term of office, where after he shall be

substituted by the member of the regional management duly nominated; and

- 8.1.2.5 Members of the National Council shall hold office from the conclusion of the biennial Congress at which they were elected until the conclusion of the next Congress; and
- 8.1.2.6 The National Council has the authority to appoint a member to the Council, failing the nomination or election of any person in terms of clause 8.1.

## 8.2 Powers and duties of the National Council

The National Council shall be the highest authority when Congress is not in session and, subject to the control and general policy of the Congress, the National Council shall, inter alia, have the following powers and duties:

- 8.2.1 All the powers of the Organisation as set out in Article 5;
- 8.2.2 To make and amend regulations for the effect of management of the affairs of the Organisation and to present it to Congress for approval.
- 8.2.3 To convene the Congress bi-annually and to report to the Congress on the past two years' activities.
- 8.2.4 To ratify and/or approve the financial statements of the Organisation for those financial years that Congress is not sitting.
- 8.2.5 To appoint amongst their own, members to serve as directors on the Board of Potato South Africa NPC (Registration Number 2005/0304944/08).
- 8.2.6 Appoint a Chief Executor Officer and approve other employees' position as may be necessary for the effective running of the Organisation.
- 8.2.7 Formulate general policy of the Organisation.
- 8.2.8 Approve the annual budget of the Organisation.
- 8.2.9 Approve the annual business plan of the Organisation.



- 8.2.10 Terminate the employment and/or terms and conditions of employment of the Chief Executor Officer and other employees of the Organisation.
- 8.2.11 Appoint representatives, agents and institutions to manage and administer certain affairs of the Organisation at the rewards and conditions as maybe mutually agreed between the parties.
- 8.2.12 Establish committees of the Council such as an Audit Committee, a Human Resources Committee, a Marketing Committee, a Research Committee, an Information Committee, a Transformation Committee and any other committee it may consider necessary in order to achieve the objectives or perform the functions of the Organisation. Every such committee may, and in turn and subject to such conditions as the Executive Council may determine, establish ad hoc or sub-committees for such periods as it may consider necessary to achieve the objectives or perform any of the functions of that committee as may be required for the Organisation to achieve its objectives as set out in the Constitution. When establishing any committee in terms of this Constitution, the Council must provide terms of reference which shall include, subject to the provisions of the Constitution, the following:
- 8.2.12.1 The name of each committee established by it;
  - 8.2.12.2 Membership;
  - 8.2.12.3 Functions;
  - 8.2.12.4 Period of establishment;
  - 8.2.12.5 Accountability;
  - 8.2.12.6 Quorum;
  - 8.2.12.7 Funding;
  - 8.2.12.8 Election of Chairperson;
- 8.2.13 To appoint technical and professional advisors and officials without voting rights to attend meetings of the Executive Council.
- 8.2.14 To make recommendations to the Congress concerning the amendments of the Constitution and Regulations.
- 8.2.15 To make recommendations to the Congress concerning membership fees and producer levies.
- 8.2.16 To consider and approve or reject new membership applications to determine a member's membership.

- 8.2.17 To keep proper minutes of its meetings, meetings of the Congress, any extraordinary Congress, the Management Committee and committees and working groups.
- 8.2.18 To appoint able officials to represent the Organisation on the Councils or Board of Directors of Companies, and/or organisations and to terminate their services.
- 8.2.19 To evaluate the production trends of the existing production areas and identify new developing potato production areas in South Africa and make recommendations to the Congress for official recognition of such areas, and in the process new regions or districts and, if necessary, the combination and/or demarcation of production areas, regions and/or districts.
- 8.2.20 To through its appointed Audit Committee be responsible to identify risk areas and performance indicators in respect of the Organisation and therefore regularly monitor these issues.
- 8.2.21 To monitor and assess the non-financial aspects pertaining to the Organisation.
- 8.2.22 To establish continuously whether the Organisation is technically geared to comply with opportunities and to compete with competitors on the same level.

### **8.3 The duties and powers of the individual members of the National Council**

- 8.3.1 The duties, powers and responsibility of members of the National Council, individually and collectively, vis-à-vis the Organisation, be exactly the same as the duties, powers and responsibility of directors of a company vis-à-vis that company as contained in South African Law.

### **8.4 Meetings of the National Council**

The National Council shall meet at least twice a year, to conduct its business.

### **8.5 Election of Chairperson and Vice-Chairperson**

- 8.5.1 The Chairperson of the Organisation, who shall be non-executive and non-aligned, shall be elected by the delegates at the biennial Congress.

8.5.2 The Vice-Chairperson of the Organisation shall be elected by the National Council at their first meeting after a biennial Congress.

8.5.3 In the event of the Chairperson delegating his position, a new Chairman will be elected by the National Council at a meeting of the National Council on the basis of an absolute majority by means of secret ballot.

## 8.6 **Voting**

8.6.1 At all meetings of the National Council:

8.6.1.1 each member of the National Council that represent producers or role players shall have one vote;

8.6.1.2 proxy votes shall not be allowed;

8.6.1.3 all questions shall be determined by a majority of votes. In the case of an equality of votes, whether on a show of hands or on a poll, the meeting will continue its discussions and strive to reach consensus. If consensus cannot be reached reasonably with an acceptable time, the matter will be dealt with in the dispute resolution procedure in Chapter 15;

8.6.1.4 all questions shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the presiding officer of the meeting or by three members personally present. The demand for a poll may be withdrawn;

8.6.1.5 unless a poll is so demanded, a declaration by the presiding officer at the meeting that a resolution has, on a show of hands, been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book containing the minutes of the proceedings of the regional management shall be conclusive evidence of the fact, without proof of the number of proportion of the vote recorded in favour or against any such resolution; and

8.6.1.6 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment as the presiding officer at the meeting directs. The result of such poll shall be deemed to be the resolution of the

National Council. Scrutinisers shall be elected to determine the result of the poll.

## 8.7 Notice of meetings

- 8.7.1 Meetings of the National Council shall be called by not less than (21) twenty-one clear days' notice in writing.
- 8.7.2 The notice shall be exclusive of the day on which it is served or deemed to have been served and of the day for which it is given. It shall specify the place, the day, the hour and the business of the meeting and shall be given in the manner provided for in this Constitution to each member.
- 8.7.3 A meeting of the National Council shall, notwithstanding the fact that it is called by shorter notice than that specified in this article, be deemed to have been duly called if it is so agreed by ninety percent of its members.
- 8.7.4 Any notice required or permitted to be given to any members of the National Council under this Constitution shall be given in the manner and in accordance with the provisions of this clause.
- 8.7.5 A notice may be given by the Secretary to any member of the National Council either personally, by telefax or electronic mail or by sending it by post in a pre-paid letter addressed to such member at the telefax, electronic mail or delivery address, as the case may be, supplied by him or her to the Organisation at the time when he or she became a member of the Organisation or at such other address within the Republic of South Africa as he or she may be notified. The Organisation or at such other address within the Republic of South Africa as he or she may have notified the Organisation in writing from time to time.
- 8.7.6 Any notice by post shall be deemed to have been served of the fifth day after the day when the letter containing it was posted. Notice sent by telefax or by electronic mail shall be deemed to have been received on the next business day after transmission. In proving the giving of the notice by post, it shall be sufficient to prove that the letter containing the notice was properly addressed, pre-paid and posted. In the case of telefax or electronic mail, it shall be sufficient to prove that the notice was transmitted to the correct address.

8.7.7 Nothing contained in this Constitution prohibits a meeting of the National Council to be conducted entirely by electronic communication.

## 8.8 **Absence of Chairperson**

8.8.1 In the absence of the Chairperson, the Vice-Chairperson acts as Chairperson with all the powers of the Chairperson vested in him. If both are absent the meeting shall elect its own Chairperson.

8.8.2 In the absence of both the Chairperson and Vice-Chairperson the National Council will elect a Chairperson for the meeting from the members present at the meeting. Such a Chairperson will act with all the powers of the Chairperson vested in him.

## **CHAPTER NINE: MANAGEMENT COMMITTEE**

### 9.1 **Constitution of a Management Committee**

9.1.1 The National Council may elect a Management Committee

9.1.2 The Management Committee shall between meetings of the National Council dispose of the relevant operational powers of the National Council and may enlist the services of other persons as required; provided that all resolutions of the Management Committee shall be referred to the next meeting of the National Council for ratification.

9.1.3 The Management Committee shall meet when necessary to discuss all other matters in the interest of the Organisation and in accordance with the constitution.

### 9.2 **Members**

9.2.1 The Management Committee shall consist of;

9.2.1.1 The Chairperson of the Organisation;

9.2.1.2 The Vice-Chairperson of the Organisation;

9.2.1.3 The chairpersons of the Information-; Research and Development-; Generic Marketing-; and Transformation committees;

9.2.1.4 A member of the Audit Committee (not being the Chairman); and

9.2.1.5 The Chief Executive Officer who shall be a non-voting member.

9.2.2 Any staff member of the Organisation who may be required from time to time to attend a meeting of the Management Committee shall be entitled to speak at the invitation of the Chairperson but not to vote.

### 9.3 **Terms of Office**

9.3.1 The office bearers of the Organisation shall hold office as members of the Management Committee for as long as they hold the position or office to which they have been appointed. The remaining members of the Management Committee shall hold office from being elected or appointed until the conclusion of the next biennial Congress meeting of the Organisation;

9.3.2 The Chairperson of the Organisation or such person shall be acting in the place of the Chairperson in terms of this Constitution, shall preside at all meetings of the Management Committee.

### 9.4 **Voting**

9.4.1 The procedures in clause 8.6 applicable to voting at National Council meetings also apply to meetings of the Management Committee.

### 9.5 **Notice of meetings**

9.5.1 The procedures in clause 8.7 applicable to notices of meeting at National Council meetings also apply to meetings of the Management Committee.

## **CHAPTER TEN: NATIONAL CHAIRPERSON**

### 10.1 **Election of Chairperson**

10.1.1 Congress shall elect a Chairperson from the members of Congress by means of an absolute majority i.e. more than 50 % of the number of votes cast by delegates who have the vote and are personally present at Congress.

- 10.1.2 The Chairperson shall serve as such until the conclusion of the Congress following the one at which he or she was elected.
- 10.1.3 The Chairperson can be eligible for re-election.
- 10.1.4 All the delegates who are present at Congress shall nominate and vote by means of secret ballot.
- 10.1.5 During the nomination and voting process the following rules shall apply, namely:
  - 10.1.5.1 There must be at least 2 (two) secondments for each nomination in each candidacy;
  - 10.1.5.2 If more than one person is nominated and accepts such nomination in writing, a vote shall be taken by secret ballot and if a candidate obtains an absolute majority i.e. more than 50% of the number of votes casts, he shall be declared elected;
  - 10.1.5.3 If no person obtains an absolute majority, the persons with the highest number of votes shall be placed on the list of candidates for a further election.
  - 10.1.5.4 Voting in the above manner shall be repeated until a candidate obtains an absolute majority whereupon he will be declared elected.
- 10.1.5 If a permanent vacancy arises in respect of the Chairperson, the Vice-Chairperson shall fill the vacancy until the following Congress.

## 10.2 **Duties and powers of the Chairperson**

- 10.2.1 The Chairperson should ensure that the Council is balanced in the sense discussed in Section 8.
- 10.2.2 The Chairperson must be able to be objective from the day-to-day running of the business in order to ensure that all relevant matters are on the agenda and properly prioritized.
- 10.2.3 The Chairperson must also ensure that all Council members are as fully informed as possible on any issue on which a decision is to be made.
- 10.2.4 The Chairperson must ensure that members of the National Council fully participate in the governance of the Organisation.

- 10.2.5 The Chairperson should ensure that the non-executive Council members, when applicable, do not exercise only a monitoring role but contribute to the business decisions or the Organisation.
- 10.2.6 The Chairperson's role is separated from that of the chief executive officer of the Organisation.
- 10.2.7 The Chairperson should establish basic priorities, ethic values, policy and value systems which create an environment of personal involvement and commitment.
- 10.2.8 The Chairperson is responsible for the overall leadership of the Council.
- 10.2.9 The Chairperson is responsible for the formulating of an annual work plan for the Council and the smooth running of the Council.
- 10.2.10 The Chairperson is responsible for the regular appraisal of the performance of the Chief Executive Officer of the Organisation.
- 10.2.11 The procedure of meetings and debate shall be at the discretion of the Chairperson. His ruling is final, except that it may be reversed by a majority decision of the meeting.
- 10.2.12 The Chairperson may at his discretion invite representatives of other organizations or any person or persons at their request or allow them to attend the Congress or any management or committee meeting and/or to participate in the discussion. Such persons shall under no circumstances be entitled to vote.
- 10.2.13 The Chairperson also has the right to co-opt any person on any ad hoc sub-committee and to request any person to attend a meeting of any Council or committee of the Organisation and to advise the Council or committee concerned.
- 10.2.14 The Chairperson shall have a deliberative vote but not a casting vote, except in the event where a decision on a particular matter has to be taken at that particular meeting.
- 10.2.15 A motion on which votes are equally divided shall be taken as rejected except in the case where a decision on a matter has to be taken at that particular meeting and the Chairperson has given his casting vote in terms of clause 10.2.15.
- 10.2.16 If the election of persons is affected by a tie the Chairperson may not cast his deciding vote and the lot shall decide.



## **CHAPTER 11:REGIONAL MANAGERMENTS**

### **11.1 Constitution of Regional Management**

- 11.1.1 Each production area, as identified by the National Council and approved by the biennial Congress, shall constitute a representative regional management according to need which has to function within the constitution of the Organisation;
- 11.1.2 Regional managements shall be appointed by the production area concerned every second year forthwith prior to Congress; provided that the constitution of the regional management must be representative of the potato producers within the particular production area;
- 11.1.3 The representation on such a regional management is in accordance with the following criteria:
  - (a) Geographical distribution of the producers;
  - (b) Proportionate numbers of producers; and
  - (c) Production in the regions.

### **11.2 Powers and duties of a Regional Management**

- 11.2.1 The regional management conform and/or provide the following services:
  - 11.2.1.1 Represents the potato interests of all the potato producers of the relevant production areas on local level as well as in the broader organizational structure of the Organisation;
  - 11.2.1.2 Administer all nominations to organizations on which members of the relevant regional management have a seat;
  - 11.2.1.3 Campaigns for the development of the potato industry, including the conservation of the earth and water resources, the maintenance and improvement of soil fertility and improved production and marketing methods within a balanced farming scheme;

- 11.2.1.4 Endeavour to maximize co-operation, participation and obtain the involvement of all producers in their production area to create an atmosphere of esprit de corps;
- 11.2.1.5 Meet on a regular basis and take decisions on behalf of the potato producers regarding all matters pertaining to potatoes in the relevant production area and must refer all matters of national importance to the National Council of the Organisation for coordination;
- 11.2.1.6 Pursuit market-related production and coordinate all production and market planning actions of the relevant production area. That is to say the gathering and dissemination of information to all role players and taking decisions in this regard;
- 11.2.1.7 Establish communication with other production areas and organisations on a regular basis to discuss matters of mutual concern;
- 11.2.1.8 Keep its potato producers informed regarding all matters affecting the potato industry;
- 11.2.1.9 Endeavour to maximize cooperation and involvement by all suppliers in its activities;
- 11.2.1.10 Appoint committees to handle specific disciplines in the relevant production area. Typical examples of sub-committees are:
- Regional Management Committee;
  - Seed Potato Committee; and
  - Potato research working group.
- 11.2.1.11 Determine the assignment, responsibilities and levels of reporting of the committee and ensure that it functions properly;
- 11.2.1.12 Ensure that administrative and secretarial support are provided to the production area and also evaluate it continuously to ensure that an optimal and cost effective service is rendered; and
- 11.2.1.13 Handle all matters objectively and on merit; and
- 11.2.1.14 Appoint delegates of that production area to attend Congress.

### 11.3 The powers and duties of the members of the regional management

11.3.1 The duties, powers and responsibility of members of the Regional Management, individually and collectively, are set out in the Code of Conduct as per Appendix A.

#### 11.4 **Voting**

11.4.1 The procedures in clause 8.6 applicable to voting at National Council meetings also apply to meetings of the Management Committee.

#### 11.5 **Notice of meetings**

11.5.1 The procedures in clause 8.7 applicable to notices of meeting at National Council meetings also apply to meetings of the Management Committee.

## **CHAPTER TWELVE: THE CHIEF EXECUTIVE OFFICER**

12.1 The National Council of the Organisation shall appoint and agree the terms of service of a suitable chief executive officer of the Organisation and from time to time to determine the functions, rights and duties of the chief executive officer and to direct and supervise the chief executive officer in the performance of his or her duties.

12.2 The Chairperson and chief executive officer shall agree on an annual performance agreement, subject to at least two review sessions per annum.

12.3 The Human Resources Committee shall consider the results of the chief executive officer's appraisal in the evaluation of the chief executive officer.

12.4 The chief executive officer must attend all meetings of and shall be an *ex officio* member of the National Council.

12.5 If the chief executive officer is absent or for any reason is unable to perform the functions entrusted to him or her, or there is a vacancy in office of the chief executive officer, the Management Committee shall appoint an officer or person to act as chief executive officer until the chief executive officer is able to resume his/her, functions or until a chief executive officer is appointed.

12.6 The Organisation may, subject to the provisions of this Constitution, appoint persons as employees of the Organisation to assist in the performance of the functions of the chief executive officer.

12.7 The chief executive officer is responsible for following:

- 12.7.1 The development of strategies which will ensure the long term survival of the Organisation within a competitive environment;
- 12.7.2 Implementation, recommendations and regular feed back to the National Council in respect of policies, strategies, objectives and key initiatives;
- 12.7.3 Coordination of the activities of the management team;
- 12.7.4 Leadership to the management team;
- 12.7.5 The Chief executive officer's duty is to run the business according to the policies and strategies adopted by the National Council of the Organisation;
- 12.7.6 The performance of the Organisation;
- 12.7.7 The introduction of sound corporate governance and the creation of a culture of quick change, transparency, innovation, entrepreneurial thinking and a high level of performance;
- 12.7.8 Create an environment of setting objectives, organizing providing leadership and effective control to lead the Organisation through uncertain circumstances;
- 12.7.9 To achieve the objective of creation of wealth in the potato industry the chief executive officer will install, maintain and support a culture of a well-informed Council.

## **CHAPTER THIRTEEN:FUNCTIONS OF THE SECRETARY**

- 13.1 The chief executive officer shall appoint a secretary for the Organisation to fulfil the statutory duties of the Organisation.
- 13.2 The secretary shall by suitably empowered by the National Council to fulfil the relevant statutory duties.
- 13.3 The secretary shall be responsible to provide the necessary guidance to the National Council and its members on the execution of their respective responsibilities.
- 13.4 The secretary shall play a leading role in the induction of new and inexperienced members of the National Council.
- 13.5 The secretary shall play a meaningful role in supporting the Chairperson and chief executive officer including minute keeping.

- 13.6 The secretary shall provide a central source of guidance and advice on business ethics and good corporate governance; and
- 13.7 The secretary shall guide the members of the National Council in respect of its duties and responsibilities and update the same on all new and pending legislation.

## **CHAPTER FOURTEEN: FINANCING, ACCOUNTING AND AUDITING**

### **14.1 Finances of Organisation**

14.1.1 The funds of the Organisation consist of:

- 14.1.1.1 interest on investments;
- 14.1.1.2 donations received from any person, body, government or administration; and
- 14.1.1.3 membership fees; and
- 14.1.1.4 any other money received from any other source.

14.1.2 Monies referred to herein may be invested at any institution allowed by the South African Revenue Services (SARS) taking into account the tax exempt status of the Organisation.

14.1.3 Any monies paid to the Organisation in terms of donations received from any person, body, government or administration must be utilized in accordance with the conditions, if any, imposed by the donor of such monies.

14.1.4 The Chairperson of the National Council must for each financial year submit a statement of estimated income and expenditure during such financial year to the National Council of the Organisation who must approve the budget for:

- 14.1.4.1 the first financial year before the first meeting of the Organisation; and
- 14.1.4.2 every other financial year before the beginning of such financial year.

### **14.2 Accounting**

14.2.1 Subject to any directions by the National Council, the Chief Executive Officer is accountable for all monies received and payments made by the Organisation.

- 14.2.2 The accounting officer is responsible for all monies received and payments made by the Organisation.
- 14.2.3 The financial year of the Organisation ends on 30 June in each year.
- 14.2.4 The accounting officer shall cause records to be kept in accordance with generally accepted accounting principles that are necessary to represent fairly the state of affairs and business of the Organisation and to explain the transactions and financial position of the Organisation.
- 14.2.5 Annual financial statements shall be prepared in respect of every financial year. The statement must consist of:
  - 14.2.5.1 balance sheet dealing with the state of affairs of the Organisation;
  - 14.2.5.2 a return of income received and expenses incurred by the Organisation; and
  - 14.2.5.3 a statement of cash flow information.

### 14.3 **Audit Committee**

- 14.3.1 In order to ensure that the Organisation is fully appraised, at all times, of its true financial position, it shall, in accordance with this Constitution, appoint an audit committee with specific duties as may be assigned to it to conduct an audit on the accounting records of the Organisation and to report to it at such intervals as it may deem appropriate.
- 14.3.2 The Audit Committee shall be chaired by a non-aligned suitably qualified person.

## **CHAPTER FIFTEEN: DISPUTE RESOLUTION**

- 15.1 Any person involved in a dispute concerning the application or interpretation of this Constitution must refer the dispute in writing to the chief executive officer.
- 15.2 The secretary of the Organisation must serve copies of such referral to the chairperson and members of the Organisation.
- 15.3 The Organisation must attempt to resolve the dispute via an internal dispute resolution procedure: failing which.

- 15.4 The secretary must, in terms of the Labour Relations Act, refer the dispute within 30 days of the referral to either:
- 15.4.1 any mediator or arbitrator appointed by the Organisation to resolve the dispute;  
or
  - 15.4.2 the Commission for Conciliation, Mediation and Arbitration.

## **CHAPTER SIXTEEN: GENERAL**

### **16.1 Rights and Obligations of Members**

16.1.1 Every member has the right to:

16.1.1.1 Be heard on any matter considered at a meeting;

16.1.1.2 Have their views on any matter considered at the meeting recorded in the minutes of the meeting and in any report or recommendation of the meeting.

16.1.2 Members of the Organisation and committees appointed by the National Council excluding full time employees of the state may claim compensation for their participation in the Organisation or its committees in accordance with the regulations.

### **16.2 Disclosure of interest**

16.2.1 A member of the Organisation or any committee or functional committee of the Organisation who is directly or indirectly interested in any business of the Organisation or the committee or the functional committee of which he or she is a member or who holds any office or possesses any property which might cause a conflict of duties or interest must declare that interest or potential conflict prior to assuming any office or, to the extent that any such conflict may arise subsequent to his assuming office, immediately thereafter.

16.2.2 Such a disclosure must be made to a meeting of the Organisation, committee or functional committee where after such disclosure shall be reported to the next meeting of the Organisation and be recorded in the minutes thereof.

### **16.3 Confidentiality**

A member or employee of the Organisation or any of its committees or functional committees shall not, while he or she is a member or employee or thereafter, disclose to any person any information, for which non-disclosure has been declared, which he or she acquired whilst exercising or performing any function or duty under this Constitution and which therefore, is confidential to the Organisation, any of its committees or functional committees to any other member or to any employer or employee in the sector or sub-sector, as the case may be.

#### 16.4 **Terms of Office**

16.4.1 Any person who attends a meeting in more than one capacity shall be entitled to the extent that he or who is entitled to vote, to one vote only.

### **CHAPTER SEVENTEEN: AMENDMENTS TO THIS CONSTITUTION**

17.1 The secretary must send copies of any proposed amendments together with the Congress agenda to all members attending the Congress.

17.2 At least 30 days' notice of a meeting at which an amendment of the constitution is to be considered will, in all instances, be required.

17.3 The provisions of this Constitution may be amended only by the decision of at least two-thirds of the members present at a meeting of the Organisation's Congress.

### **CHAPTER EIGHTEEN: DISSOLUTION OR WINDING UP**

18.1 The Organisation may be dissolved by a resolution adopted by at least two-thirds of the delegated members at a special Congress convened for the purpose and of which notice of at least 45 (forty five) days has been given before the Congress.

18.2 On liquidation or dissolution the remaining assets of the Organisation shall be handed over to another association or organization being a participant in organised agriculture with objects similar to those of the Organisation which has also been exempted from the payment of income tax and donations tax, appointed for this purpose by the National Executive or, failing such appointment, to an association or organisation designated by the court.