

CONSTITUTION OF THE  
SOUTH AFRICAN DIAMOND  
PRODUCERS ORGANISATION  
(SADPO)

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## **1. INTRODUCTION**

1.1 Various role players share a variety of interests in the diamond industry;

1.2 Such role players desire to promote the diamond industry in general;  
and

1.3 These role players intend to serve and promote the industry through the Organisation, as is more fully set out in Clause 3.

## **2. INTERPRETATION**

2.1 Unless another meaning is clear from this agreement:

2.1.1 One gender includes the other gender;

2.1.2 The singular includes the plural and the converse; and

2.1.3 Natural persons include entities (incorporated or non-incorporated) and the State.

### **2.2 TERMINOLOGY**

The following terms shall mean the following and related expressions shall have corresponding meanings:

2.2.1 “**Diamond Act**” means the Diamond Act 56 of 1986, as

amended or replaced from time to time;

2.2.2 **“Marketing entities”** mean any legal entity involved in the marketing of a producer’s diamonds;

2.2.3 **“Minerals”** mean Diamonds;

2.2.4 **“Mineral right”** means a prospecting or mining right or a mining permit;

2.2.5 **“MPRDA”** means the Minerals and Petroleum Resources Development Act 28 of 2002 of South Africa and the regulations enacted under it, as amended or replaced from time to time;

2.2.6 **“Mine”** as defined in section 1 of the MPRDA;

2.2.7 **“Mining”** shall have a corresponding meaning;

2.2.8 **“Mining activity” / “Mining”** means exploiting, prospecting and/or mining for diamond-bearing material and the extraction of diamonds from it;

2.2.9 **“Producer”** means any person entitled to win or recover diamonds in terms of Sections 19, 25 and 27 of the Mineral and Petroleum resources Development Act; and

2.2.10 **“Quorum”** means 50% plus 1 of the elected office-bearers

2.3 Where any number of days is prescribed in this Constitution, they will be calculated by excluding the first day but including the last day, except if the last day falls on a Saturday, Sunday or public holiday, in which case the last day will be the following day which is not a Saturday, Sunday or public holiday.

### 3. **GOALS**

#### 3.1 **THE ORGANISATION WAS FOUNDED IN ORDER:**

3.1.1 To serve as an organisation for the promotion of the diamond industry by those who are entitled to prospect and/or to mine for diamonds in terms of the Laws of the Republic of South Africa, as well as the owners of land surfaces with diamond-bearing gravel which may be exploited;

3.2 To take steps which the Organisation deems necessary for the purpose of promoting the exploitation of diamonds;

3.2.1 To serve as a forum for discussion and interaction with other structures involved in the exploitation of diamonds, including the State structures and marketing structures, with a view to promoting the diamond industry in general; and

3.2.2 To serve as an information channel through which the necessary information relating to the diamond industry can be channelled.

3.3 In order to achieve the above-mentioned goals, **THE ORGANISATION SHALL HAVE THE AUTHORITY:**

3.3.1 To bring pressure to bear on the Minister to recognise and to consult the Organisation in respect of the diamond industry;

3.3.2 To campaign for the appointment of a member to the Board of the South African Diamond and Precious Metals Regulator, formerly known as the Diamond Board;

3.3.3 To acquire premises to be occupied by the Organisation in order to serve as a basis for properly running and managing the organisation;

3.3.4 To campaign for the resolution of disputes among members in the industry, through arbitration;

3.3.5 To affiliate with or to incorporate other organisations, with a view to achieving the objects of the Organisation;

3.3.6 To make presentations to the public and other organisations in the interests of the Organisation and/or the diamond

industry, including State structures;

3.3.7 To take legal steps and to pay all fees and disbursements in connection therewith for the protection of the collective interests of the members of the organisation, including litigation concerning an individual member, if the litigation of such individual is advantageous to all members of the organisation;

3.3.8 To take any steps which the Organisation deems necessary in order to achieve the Organisation's goals directly or indirectly as set out in 3.1 above; and

3.3.9 Nothing in this Constitution authorises the exchange of information among members, which information is not part of the public domain and/or which may grant a competitive advantage.

#### **4. MEMBERSHIP**

4.1 THE MEMBERSHIP WILL COMPRISE ONLY THE FOLLOWING:

4.1.1 Diamond producers: Any person who exploits or recovers diamonds in terms of sections 19, 25 and 27 of the MPRDA;

4.1.2 Surface owners: Any person who possesses immovable property or is in possession of immovable property in respect of which prospecting and/or mining activity for diamonds is carried out, or may be carried out;

4.1.3 Marketing entities: Any legal marketing entity;

4.1.4 Any person or structure which can make a positive contribution to the goals of the Organisation, as approved by the National Committee.

4.2 Application for membership of new members must be made in the manner prescribed by the National Committee.

4.3 New Producers at the Marketing entities will automatically gain membership to the Organisation.

4.4 Non-Producers may apply to the National Committee for membership of the Organisation.

#### 4.5 **SUBSCRIPTIONS**

4.5.1 Membership fees are payable to the Organisation and will be determined from time to time by the National Committee;

4.5.2 Membership fees of Producers levied by the Marketing entities will be paid on or before the last business day of the



month following the month in which the said levies are due to the Organisation;

4.5.3 Marketing entities will pay their levies before the last business day of each month; and

4.5.4 Non-Producers will pay their membership fees to the Organisation as determined from time to time by the National Committee.

#### **4.6 SUSPENSION AND CANCELLATION OF MEMBERSHIP**

4.6.1 Membership may be suspended by the National Committee on the following grounds:

4.6.1.1 If the member no longer qualifies for membership as provided in Clauses 4.1 – 4.5 above;

4.6.1.2 If a member remains in arrears with the payment of his membership fees for a period of two (2) months after a request for such payment has been made by way of a notice in writing addressed to his postal address or e-mail address; and / or

4.6.1.3 If the Committee in its sole discretion is convinced that a member through his conduct has

embarrassed the Organisation and/or brought dishonour to the name of the Organisation.

4.6.2 In the case of suspension in terms of 4.6.1 above, the National Committee is entitled to cancel the suspended membership only after a due process has been followed, which includes offering the member concerned an opportunity to state his case to the National Committee.

#### **4.7 RESIGNATION OF MEMBERSHIP**

Any member may resign in writing. The resignation is effective as soon as the National Committee receives it, without prejudice to any rights or remedies which the Organisation may have.

### **5. ORGANISATIONAL STRUCTURES**

5.1 The Organisation will consist of the National Committee and subcommittees, constituted as set out below.

5.2 The National Committee will be elected and/or appointed by the members present at the Annual General Meeting.

5.3 Such Annual General Meeting may be divided into separate meetings although every meeting shall be regarded as forming part of the

Organisation's Annual General Meeting.

5.4 If the Annual General Meeting is so divided, the votes of each separate meeting will be brought into account to determine whether the Annual General Meeting may accept such resolutions.

5.5 Any resolution thus collectively approved at a separate meeting will be deemed to be a resolution of the Organisation's Annual General Meeting and will be binding and enforceable as if it had been adopted at a collective meeting.

5.6 The Chairperson of the National Committee will also act as Chairperson of every SADPO meeting.

#### **5.7 THE NATIONAL COMMITTEE**

5.7.1 The National Committee will be composed of members elected as follows:

5.7.1.1 As far as possible, an equal number of Producer members from the different geographic areas will be elected from each individual geographic area meeting or Annual General Meeting to serve as National Committee members;

5.7.1.2 A maximum of ten (10) Producer members will be elected; and

5.7.1.3 One (1) representative from each Marketing entity will be elected.

5.7.2 The National Committee will elect its own Chairperson and Vice-Chairperson from the Producer Members.

5.7.3 The Chairperson will have a deciding vote.

#### **5.8 POWERS AND AUTHORITY OF THE NATIONAL COMMITTEE**

5.8.1 The National Committee has to ensure that its powers and authority are exercised in a proper manner.

5.8.2 The National Committee will be entitled to appoint Subcommittees and to delegate powers to carry out any investigation or task which is in the interests of the diamond industry.

5.8.3 The National Committee shall liaise with any other State and non-State structures, as deemed necessary from time to time.

5.8.4 The National Committee shall strive to promote the status and image of the diamond industry.

- 5.8.5 The National Committee shall convey appropriate / essential information about the diamond industry to its members.
- 5.8.6 The National Committee shall liaise continuously with the Department of Mineral Resources.
- 5.8.7 The National Committee shall take all necessary decisions on behalf of the Organisation. For this purpose, the National Committee will take note of and take into consideration the recommendations of the Subcommittees, if applicable.
- 5.8.8 The National Committee shall meet quarterly at a time and place arranged in consultation with the Chief Executive Officer. Urgent meetings and telecom meetings can be convened as needed.
- 5.8.9 The National Committee may appoint such Chief Executive Officer, as well as any other employees for whom there is a need, and may take decisions about their conditions of service.
- 5.8.10 The day-to-day management of the National Committee will be performed by the Chairperson, Vice-Chairperson, Chief Executive Officer and one (1) member of the National Committee.

5.8.11 The National Committee will decide on the administration of the Organisation's finances and the allocation of funds for expenditure by the National Committee. Payments will be authorised by any two (2) of the following:

5.8.11.1 The Chairperson; and/or

5.8.11.2 The Vice-Chairperson; and/or

5.8.11.3 The Auditor or his alternate.

5.8.12 The National Committee may take all the necessary steps in order to generate income and is entitled to accept donations.

5.8.13 The National Committee will ensure that the Organisation's finances are audited annually and that the auditor's report is submitted for noting and discussion by the members at their Annual General Meeting. The report will also be presented at the quarterly meetings of the National Committee.

5.8.14 For all practical purposes, it will be deemed that the National Committee has an unambiguous mandate to act in the interest of the diamond industry as set out in paragraph 3 of the Constitution, unless decided otherwise by the Annual General Meeting.

- 5.8.15 The National Committee on behalf of the Organisation will be entitled to institute or to defend any action in any court of law or forum for arbitration or mediation.
- 5.8.16 The National Committee on behalf of the Organisation will be entitled to open bank accounts, make payments and issue receipts.
- 5.8.17 All payments made by members by debit card or credit card have to be accompanied by an invoice to the treasurer.
- 5.8.18 The National Committee will be responsible for the enforcement of and compliance with the Constitution of the Organisation.
- 5.8.19 The National Committee will also be entitled to deal with any matter not referred to in the Constitution, which is relevant to and/or of importance for the goals of the Organisation or which is in the interests of the members of the Organisation.
- 5.8.20 The National Committee will be entitled to determine procedures and to lay down rules to deal with any matter or aspect not contained in this Constitution.
- 5.8.21 If any office-bearer is absent from two (2) successive National Committee meetings without a valid apology or

without sending a representative, he shall vacate his office and the provincial structure and/or National Committee may co-opt a replacement for the remaining term.

5.8.22 No resolutions may be taken at meetings of the National Committee unless a quorum is present.

5.8.23 The treasurer will submit at every meeting an updated statement of income and expenditure on financial matters to the National Committee, with specific reference to the income accrued and expenditure incurred since the previous meeting.

5.8.24 All elected office-bearers shall declare in writing their interests in their private capacity, which could lead to a conflict of interests in terms of their association with the Organisation.

## **5.9 CHIEF EXECUTIVE OFFICER**

5.9.1 The Chief Executive Officer will be appointed by the National Committee. The position of the Chief Executive Officer may be advertised and applications must be accompanied by a *curriculum vitae*.

5.9.2 The National Committee shall compile and provide a



specified list of the conditions of service, as well as establish the minimum educational or academic or practical requirements for the position.

5.9.3 The Chief Executive Officer will be responsible for controlling and administering the affairs of the Organisation. He will be obliged to carry out and put into effect the resolutions and instructions of the National Committee and its Chairperson.

5.9.4 During negotiations with other organisations and structures on behalf of the Organisation, the Chief Executive Officer has to be accompanied by the Chairperson of the National Committee or another person designated for this purpose by the Committee.

#### **5.10 ARBITRATION**

5.10.1 Any member who is involved in a dispute with another member may apply to the National Committee to facilitate the arbitration of the dispute;

5.10.2 The National Committee on receiving such application, shall endeavour to settle the dispute through mediation;

5.10.3 If such mediation fails, the National Committee may obtain the services of a person or association to act as arbitrator;

5.10.4 The decision of the arbitrator shall be final and binding on the parties concerned; and

5.10.5 The parties shall finance the arbitration, unless the National Committee decides otherwise.

**6. COMPLAINTS AGAINST OFFICERS AND MEMBERS**

Every complaint against an officer or member of the Organisation shall be submitted in writing and be handed over to the chairperson of the Committee concerned, to be investigated whereafter a report shall be submitted to the National Committee.

**7. AMENDMENT OF CONSTITUTION**

The Constitution may be amended at the Annual General Meeting, as set out above, provided that notice of such amendment is given together with the notice of the meeting and provided that such amendments are approved by 66% of the members present at the Annual General Meeting.

**8. INDEMNIFICATION OF COMMITTEE MEMBERS AND OFFICE-BEARERS**

The members of the National Committee, all other office-bearers, members and employees of the Organisation are indemnified against and exempted

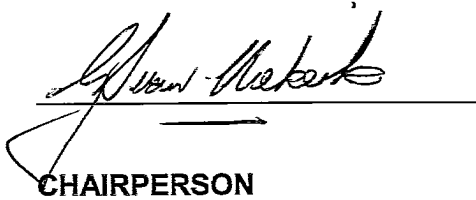
from any claim for damages or loss and costs incurred in the interests of the Organisation, except if this is caused by his own conduct which contains an element of dishonesty or *mala fides*.

**9. DISSOLUTION**

- 9.1 The Organisation may be dissolved by a majority decision of at least 66% of members present, taken at the National Annual General Meeting of the Organisation.
- 9.2 In the case of dissolution, the National Committee will appoint a liquidator to take control of the assets and liabilities of the Organisation and to liquidate it.
- 9.3 If a surplus is available after the payment of all the aforesaid administrative costs, liquidation costs and claims of creditors, the liquidator will pay such surplus to a charity organisation whose main goal is nature conservation as determined by the National Committee or alternatively by the liquidator.
- 9.4 None of the members of the Organisation will be liable for any shortfall in respect of the payment of the Organisation's debts, but none of the members will be entitled to receive payment of any part of the surplus, merely because he was a member of the Organisation.

**10. APPROVAL OF CONSTITUTION**

This Constitution was approved by the National Annual General Meeting of the  
Organisation held at Kimberley  
on this 17<sup>th</sup> day of June 2014.

  
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**CHAIRPERSON**