



# ***CONSTITUTION***

**OF**

# **THE SOUTHERN AFRICAN BITUMEN ASSOCIATION**

**March 2010**

**CONSTITUTION**

1. **NAME**  
The name of the Association is **THE SOUTHERN AFRICAN BITUMEN ASSOCIATION**
2. **REGISTERED OFFICE**  
The registered office of the Association shall be at such place as the Council shall from time to time nominate within the Republic of South Africa, being the headquarters for the time being of Council.
3. **DEFINITIONS**  
In the interpretation of this Constitution, the following words and expressions shall have the meanings respectively set opposite each, unless inconsistent with the subject or context:
  - 3.1 **“The Association”** shall mean **THE SOUTHERN AFRICAN BITUMEN ASSOCIATION**.
  - 3.2 **“The Industry”** shall mean the bituminous product and associated industries.
  - 3.3 **“The Constitution”** shall mean the Constitution of the Association.
  - 3.4 **“Writing”** shall include printing, lithography, typewriting and other usual substitutes for handwriting.
  - 3.5 **“Bituminous Products”** shall comprise binders and mixtures of binders containing bitumen. This definition does not include tar products produced by the pyrolysis of coal, lignite, wood or any other organic substance(s).
    - 3.5.1 **“Bitumen”** shall be defined as a complex mixture of predominantly saturated hydrocarbons produced as a residue from the distillation of petroleum.
    - 3.5.2 **“Asphalt”** shall mean a natural or mechanical mixture or system consisting of bitumen with a substantial proportion of solid, inert mineral matter.
  - 3.6 Words imputing the singular number only shall include the plural, and vice versa, unless clearly restricted by the content, and words implying the masculine gender shall also include the feminine unless it shall definitely appear from the context that one sex only is intended.
  - 3.7 **“Financial Year”** shall mean twelve (12) consecutive calendar months, commencing 1 January of one year and terminating 31 December of the same year.

- 3.8 **“The Secretary”** shall mean the person acting as the Association’s Secretary and upon whom shall devolve all ordinary secretarial duties additional to those provided in the Constitution.
- 3.9 Generally, unless expressly stated to the contrary, the widest possible interpretation shall be given to the terms and powers and authorities herein mentioned and unless definitely stated to the contrary, words, phrases and sentences shall be construed according to their usual meaning and not according to any special statutory definition.
- 3.10 **“Southern Africa”** shall mean that part of the African continent south of the equator with countries that wholly or partially fall within that region.

4. **OBJECTS**

- 4.1 To promote excellence in the use of Bituminous Products in all types of construction in southern Africa.
- 4.2 To disseminate among members of the Association information on the bituminous products and associated industries (“The Industry”) and the technology related thereto.
- 4.3 To provide a forum for discussion between engineers, designers who are representatives of a legal entity eligible for membership of the Association and other interested entities for the expression of views, opinions and proposals relating to the use of Bituminous Products and the technology associated with these materials and products.
- 4.4 To print, publish, issue and circulate magazines, books, papers, circulars and other literary productions devoted to topics of interest to those engaged in or associated with the Industry.
- 4.5 To represent the Industry in the media.
- 4.6 To employ skilled advisors and consultants and other persons for the purpose of carrying out the objectives of the Association and to pay for their services.
- 4.7 Where appropriate, to enter into arrangements with foreign institutions, associations or companies carrying on or engaged in similar activities (other than for the purpose of gain) to promote the objects of the Association.

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- 4.8 Where appropriate, to bring before judicial, legal or other tribunals, government, municipal, local or departmental authorities and public bodies and associations, and the officials thereof, all matters affecting the Industry.
- 4.9 To collect funds from members and other persons and bodies for the execution of the objectives of the Association.
- 4.10 To indemnify any member of the Association in respect of any action taken or to be taken, or any liability incurred or to be incurred by such member in any manner which the Association may consider would further the objects and policy of the Association in accordance with the Association's Constitution and Code of Conduct.
- 4.11 To purchase, take on lease, hire or otherwise acquire for the purposes of the Association, or as an investment of its funds, any real or personal property and to maintain, improve, develop, dispose of, turn to account, or otherwise deal with all or any of the property of the Association.
- 4.12 To invest the funds of the Association not immediately required upon such securities or otherwise in such manner as may from time to time be determined by the Council of the Association ("the Council").
- 4.13 To borrow money with or without security within the limit fixed from time to time by the Council for the purposes of the Association and to guarantee the Association's performance of any obligations that it may properly undertake.
- 4.14 To do all such other acts and things as may be incidental or conducive to the attainment of the above objectives, or any of them.
- 4.15 To carry out the above objectives in compliance with the laws of South Africa and, in particular, to comply with South Africa's Competition Act (Act No 89 of 1998).

5. **ASSETS**

- 5.1 The income and property of the Association, howsoever derived, shall be applied solely towards the promotion of the objects of the Association, as set forth in the Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of profit or otherwise to any member or members of the Association; provided that nothing herein contained shall prevent the payment in good faith and remuneration to any officer or servant of the Association, or to any member thereof in return for any services rendered to or on behalf of the Association.
- 5.2 The Association is a non-profit making organisation, formed other than for the purposes of gain.
- 5.3 If upon winding up or dissolution of the Association, there remains after satisfaction of all its debts and liabilities, any assets or property whatsoever, the same shall be given or transferred to some other association or institution or associations or institutions having objects similar to the main objects of the Association. Such beneficiary/ies to be determined by majority vote of the ordinary members of the Association at or before the time of its dissolution, or failing such determination, by the High Court of South Africa.

6. **COUNCIL**
- 6.1.1 The control of the affairs of the Association is hereby vested in the members thereof in general meeting and the Council shall at all times comply with and carry into effect decisions made and directions given at any general meeting of the Association.
- 6.1.2 Subject to the foregoing, and until the Association in general meeting shall otherwise determine, the management of the affairs of the Association in the intervals between general meetings thereof shall be vested in a Council of Management, in this Constitution referred to as "The Council".
- 6.1.3 The Council shall be constituted as follows:
- 6.1.3.1 Each sponsor member (refer clause 7.1) shall have a permanent seat on council and each sponsor member shall nominate a representative to fill this permanent seat from time to time;
- 6.1.3.2 The same number of seats as in 6.1.3.1 shall be made available to individuals, being directors or senior executives employed by ordinary members (refer clause 7.2) and elected by the majority of ordinary members, subject to limitations as outlined in clause 7.
- 6.1.4 Notwithstanding the provisions of 6.1.3 it is recorded that associate members may appoint two (2) members to Council.
- 6.1.5 Written nominations for election and appointments to Council, shall be called for by the Secretary at least seven (7) weeks before the Annual General Meeting, and shall be returned to the Secretary five (5) weeks before the Annual General Meeting, accompanied by the written acceptance of the person so nominated or appointed.
- 6.1.6 The postal ballot papers must be sent out to the members entitled to vote at least four (4) weeks before the Annual General Meeting and must be returned to the Secretary by at least one (1) hour before the notified time of the Annual General Meeting.
- 6.1.7 Council may co-opt additional members *nem.dis* subject to the number of councillors not exceeding fourteen (14).
- 6.1.8 All elected council members shall serve for a three (3) year period of office but shall thereafter be eligible for re-election. Appointed and co-opted councillors' term of office shall be re-affirmed annually.
- 6.1.9 Members will be bound to procure that council members duly elected will as far as is possible attend personally to the affairs of the Council.

If this is not possible for any reason acceptable to the Council, any member of the Council may from time to time nominate an alternate representative who shall be one (1) of the ordinary members' directors or senior executives, or such other person acceptable to the Council. Any such nomination may be revoked at any time by the appointor or by resolution of the majority of the Council, and such nomination or revocation shall be effected by notice in writing to the Secretary.

6.1.10 Notwithstanding the provisions of clause 6.1.9, a vacancy arising from the departure of a councillor before the expiry of his term of office, from whatever cause, shall not be filled for a period exceeding the unexpired term of office of the departing councillor.

6.2 **Disqualification of members of Council**

The office of a member of the Council shall be vacated if such member:

6.2.1 becomes bankrupt; or

6.2.2 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or

6.2.3 resigns his office by notice in writing to the Association; or

6.2.4 is required to do so by the Council as a result of the fact that the company or firm which employs him ceases to be a member of the Association, or goes into liquidation, or makes an arrangement or composition with its creditors, or if an Order of Receivership is made against it, or if the council member ceases to be a director or senior executive of such firm or company.

6.3 **Quorum**

The council quorum shall be seven (7) council members including the Chairman. In view of the distances involved, the Council shall at its discretion and subject to the powers vested in it in terms of clause 6.1.10 allow the appointment of a proxy for a council member and such proxy shall be the representative of an ordinary member nominated in writing to the Secretary at least one (1) week before the particular council meeting.

6.4 **Powers of Council**

Subject always to clauses 6.1.1 and 6.1.2 of the Constitution, the management of the affairs of the Association shall be vested in the Council which may exercise all the powers, authorities and discretion of the Association, except such as are expressly directed in the Constitution to be exercised by the Association in General Meeting.

- 6.4.1 Without prejudice to the general powers conferred by the preceding clause, or any other powers conferred in terms of the Constitution, the Council may:
- 6.4.2 pay all costs, charges and expenses of and incidental to the formation and registration of the Association;
- 6.4.3 appoint and remove or suspend officers, servants and agents and prescribe their duties and their remuneration;
- 6.4.4 give receipts, releases and discharges for moneys payable to the Association and for claims and demands of the Association, and settle or compromise the same;
- 6.4.5 determine who may sign on behalf of the Association, bills, notes, cheques, receipts, acceptances, endorsements, contracts and other documents;
- 6.4.6 borrow or raise money for the purpose of fulfilling the objects of the Association.
- 6.4.7 apply for concessions, rights and charters and for legislative, governmental or local authority for any purpose and oppose by lawful means such applications by others;
- 6.4.8 make, vary and repeal rules for the regulation of the affairs and functions of the Association; provided always that no rule so made shall be inconsistent with the terms of the Constitution;
- 6.4.9 determine and set from time to time the qualifications and subscriptions for membership of the Association subject to the provisions of clause 10.
- 6.5 **Council Meetings**
- 6.5.1 **Notices**  
Not less than fourteen (14) clear days notice in writing of any council meeting specifying the place, day and hour of the meeting shall be given by the Secretary to all council members. The Chairman or in his absence, the Vice-Chairman of the Council, in the case of urgency, may in his discretion convene a council meeting in such manner and at such place upon shorter notice.
- 6.5.2 At its first meeting next pursuant upon its election, the Council may elect or appoint the following office bearers:

- 6.5.2.1 A Director who shall be the chief administrative executive of the Association and take all the practical, routine, disciplinary and administrative steps to implement the policies, resolutions and directions of the Council;
- 6.5.2.2 An Honorary Secretary, or employ a Secretary and this Secretary shall be responsible for keeping the minutes of the council meetings and carrying out of such instructions as he may be given by the Council;
- 6.5.2.3 A Treasurer who shall be responsible for keeping up-to-date books, records and accounts, and shall further be responsible for supplying financial data to the Auditors appointed at the Annual General Meeting.
- 6.5.2.4 A Chairman of the Council and Vice-Chairman, elected as the first item of business at the first meeting of the Council to be held after the Annual General Meeting, whose functions shall include *inter alia*, acting as Chairman of Council and shall, when present, chair and preside over all council meetings and shall act generally as directed by the Council, or in consultation with council members, but in a case of an emergency shall act in the interests of the Association, and report back to the Council at the earliest opportunity for ratification of such acts.
- 6.5.3 The Council shall meet together for the despatch of business adjourned and otherwise regulate its meetings and proceedings as it thinks fit, subject to the powers and obligations conferred upon it in Annual General Meeting or in terms of the Constitution.
- 6.5.4 A member of the Council may at any time and the Secretary shall upon request of such members, convene a meeting of the Council subject to notice as herein before provided in clause 6.5.1 hereof. Every council member shall be entitled to notice thereof.
- 6.5.5.1 Each member of the Council shall have one (1) vote.
- 6.5.5.2 Questions arising at any meeting of the Council shall be determined by a majority of votes. In the case of an equality of votes on any question, the Chairman of the meeting shall have a second or casting vote in addition to his ordinary vote provided that the meeting is properly constituted.
- 6.5.5.3 A meeting of the Council for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers or discretion by or under the regulations of the Association for the time being, vested in, or exercisable by the Council generally.

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- 6.5.5.4 The Council shall appoint standing committees consisting of such member or members of its body or such person or persons as it may think necessary to enable the standing committees to fulfil their functions of investigating and reporting to the Council.
- 6.5.5.5 The committees referred to in paragraph 6.5.5.4 above shall consist of at least three (3) persons with the chairman of each standing committee being a councillor.
- 6.5.6. The Executive Committee shall be formed and shall consist of the chairmen of the standing committees as formed from time to time as well as the chairman and vice-chairman of council if not already a chairman of a committee.
- 6.5.7 A resolution in writing signed by all the members of the Council shall be as valid and effectual as if it has been passed at a Council meeting duly called and constituted.

7. **MEMBERSHIP**  
All members undertake to adhere to all clauses of the HSE Charter (Addendum A to the Constitution) as amended from time to time as well as commit to quality in all the aspects of manufacturing, applying or selling bituminous products.
- A holding company not producing, manufacturing or selling bituminous products in southern Africa shall be entitled to become an ordinary member if in the opinion of the Council it is otherwise qualified. Representation on Council by individual companies of such a holding company shall be eligible to a maximum of two council seats if so elected.
- The initial qualifications and categories of membership of the Association shall be as follows:
- 7.1 **Sponsor Members**  
A company which is prepared to make a financial contribution, of a quantum and for a period as determined from time to time, to Sabita to enable it to achieve its objects, shall be entitled to become a sponsor member if in the opinion of the Council it is otherwise qualified.
- 7.2 **Ordinary Members**  
A company, close corporation, partnership or trading trust producing, manufacturing or selling Bituminous Products in southern Africa, shall be entitled to become an ordinary member if in the opinion of the Council it is otherwise qualified.
- 7.3 **Associate Members**  
A company, close corporation, partnership, trading trust or other organisations actively interested in the promotion of excellence in the use of Bituminous Products in southern Africa, shall be entitled to become an Associate Member if in the opinion of the Council it is otherwise qualified. Public sector organisations providing services related to the use of Bituminous Products shall qualify for associate membership. Associate Membership shall not be open to the legal entities which qualify for ordinary membership.
- 7.4 **Foreign Members**  
A company, close corporation, partnership or trading trust actively participating in the promotion of excellence in the use of Bituminous Products outside southern Africa, may be elected a Foreign Member. Employees of foreign members shall not be eligible for election to Council.

- 7.5           **Honorary Members**  
Any person who has rendered distinguished service to the Industry in the opinion of the Council may be elected an Honorary Member.
- 7.6           **Affiliate Members**  
A company, close corporation, partnership or trading trust manufacturing or selling or actively interested in the promotion of excellence in the use of bituminous products in southern Africa, shall be entitled to become an Affiliate Member if in the opinion of Council, it is otherwise qualified in terms of the following criteria for a small size business in the construction sector as contained in the National Small Business Act 102 of 1996 (amended November 2003):
- 7.6.1        The annual gross turnover of the company, close corporation, partnership or trading trust must be less than six million Rand (R6 000 000) or as amended by the Act from time to time;
- 7.6.2        The total gross asset value of the business - excluding fixed property - must be less than R1 000 000 (one million Rand) or as amended by the Act from time to time;
- 7.6.3        The complement of personnel employed at the business shall not exceed forty nine (49) or as amended by the Act from time to time.
- 7.6.4        The period of membership to be limited to five (5) years where after the affiliate member must either become an ordinary or associate member, failing which his membership will lapse.

- 8. APPLICATION FOR MEMBERSHIP**
- 8.1 Election to membership shall be made by the Council. Every applicant for election shall send to the Secretary of the Council a written application for election in such form as the Council may from time to time determine, signed by two (2) members of the Association as described in clauses 8.1.1 and 8.1.2, and shall furnish the Council with all information which the Council may require concerning the applicant's eligibility or fitness to become a member.
- 8.1.1 A written application for ordinary membership to be proposed and seconded by two ordinary members of the Association;
- 8.1.2 A written application for associate or affiliate membership to be proposed and seconded by either ordinary and/or associate members of the Association.
- 8.2 The Council shall have full power to determine the eligibility and/or fitness of every applicant for membership and may grant or refuse any application. Every decision of the Council on the eligibility and/or fitness of any applicant for membership or as to whether any member has ceased to be qualified as a member shall be final and conclusive. No applicant shall be elected as a member except with the consent of at least two-thirds (2/3rds) of the Council members or their proxies voting.
- 8.3 A member shall be entitled to resign from membership if such member shall first have given six (6) calendar months notice of intention so to do and during this six (6) months period such member shall continue to be liable for payment of subscription and all dues and interest thereon and meet all other obligations to which it is obliged in terms of the Constitution.

9. **CESSATION/CANCELLATION OF MEMBERSHIP**  
A member shall cease to be a member and to have the rights and privileges of a member:
- 9.1.1 if being a company, close corporation, partnership, trading trust or other organisation, an effectual order be made or resolution be passed for the winding up of such company, close corporation, partnership, trading trust or other organisation, otherwise than for the purposes of reconstruction;
- 9.1.2 if the member shall have been notified by the Secretary that such member's subscriptions or dues or interest thereon has or have been owing for a period of three (3) months and such member continues in default for a further period of thirty (30) days after such notification.
- 9.2.1 The Council may be satisfied that any member has breached the terms of the Constitution, or has done any act or thing which has or may operate to the prejudice of the Association, or its members, at a Special Meeting of the Council convened for the purpose at which not less than two-thirds (2/3rds) of the members of the Council are present, expel any member from membership, or suspend his rights of membership for a fixed term provided that any such member shall be given written notice of the date, time and place of such meeting, and of the acts or conduct alleged against him, and shall be allowed to attend before the Council to make such explanations of his acts or conduct as he shall desire. The council members shall record their vote by ballot.
- 9.2.2 Any member suspended or expelled in terms of the Constitution may be reinstated by the vote of two-thirds (2/3rds) of those present and voting by ballot at a Special or Annual General Meeting of the Association, convened with due notice for the purpose. A member suspended will temporarily forfeit all rights, but remain responsible for subscriptions and all other dues and obligations in terms of the Constitution.
- 9.2.3 The expulsion of a member carries with it the forfeiture of all such member's rights and privileges under the Constitution, and in the case of ordinary and associate members, the fees and subscriptions which he has paid to the Association shall be automatically forfeited.

10.           **SUBSCRIPTIONS**
- 10.1           Each member shall upon election pay a joining fee and shall be further liable to pay an annual subscription for membership.
- 10.2           Each member shall on or before the first day of January in each and every year pay an annual subscription fee, the amount of which fee, together with the joining fee, shall be determined at each Annual General Meeting, and be applicable for the ensuing year. In the event of the Council deeming it necessary to alter the aforesaid subscription and joining fees during such ensuing year, then in that event such alteration shall be determined by the majority of ordinary members present at a Special General Meeting, or who respond to the postal ballot in respect of the proposed alterations.
- 10.3           All dues which are not paid within the month in which they become payable, shall bear interest until the date of payment at the rate of twelve percent (12%) per annum.
- 10.4           The annual subscription of: -
- 10.4.1           Ordinary members will be based on a fixed rate plus a variable rate based on volumes of bitumen utilised by such ordinary members.
- 10.4.2           Associate, Affiliate and Foreign members on a fixed rate only.
- 10.5           In addition to charges referred to in paragraphs 10.1 and 10.2 above, the council may and in its sole discretion levy a charge on any member who requests the Association to undertake a project of a specialised nature.

11. **ASSOCIATION MEETINGS**
- 11.1 **Annual General Meetings / Special General Meetings**  
The first General Meeting of the Association shall be held within a period of not less than one (1) month or more than three (3) months from the formation of the Association, and thereafter General Meetings shall be held once at least every year unless otherwise determined by the Council, at such time and place as may be determined by the Council; provided that the interval between any two (2) successive annual general meetings shall not exceed fifteen (15) months.
- 11.2 The general meetings referred to in the last preceding paragraph shall be called annual general meetings and all other general meetings of the Association shall be called special general meetings.
- 11.3 The business of the Annual General Meeting shall be to receive and consider the balance sheet and report of the Council, to declare members of the Council elected as prescribed in the Constitution and to transact any other business which under the Constitution ought to be transacted at an annual general meeting. All other business at annual general meetings and special general meetings shall be deemed to be special.
- 11.4 The Council may whenever it thinks fit, convene a special general meeting for any specific purpose, but shall set out in a notice convening such a meeting, full details of the object/s for which the meeting is called and the motions to be submitted thereat.
- 11.5 The Council shall convene a special general meeting upon the written application of four (4) ordinary members, or six (6) associate members of the Association; provided that the requisitioners shall state in such application the object of convening the meeting and the motions to be submitted thereat.
- 11.6 Not less than fourteen (14) clear days notice in writing of any general meeting specifying the place, day and hour of the meeting and in the case of special business, the nature of such business shall be given to every member by notice sent by post, or otherwise served as hereinafter provided. The accidental omission to give notice of the meeting or the non-receipt of any such notice shall not invalidate the meeting.
- 11.7 The quorum for a general meeting shall be eight (8) ordinary members, present in person, or by attorney or proxy.

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- 11.8 If within half an hour after the time appointed for the meeting, a quorum be not present:
- 11.8.1 if the meeting be a requisitioned meeting, such meeting shall be dissolved;
- 11.8.2 in any other case, it shall stand adjourned to the same day in the next week and at the same time and place, or otherwise as the members present in person or proxy shall determine and at such postponed meeting, the business may be transacted by the members so present, whether or not they constitute a quorum, provided that such members be not less than two (2); and
- 11.8.3 no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which it was adjourned;
- 11.8.4 should there not be two (2) members present at such adjourned meeting, then the Council shall take such decisions in relation to the business as they may deem appropriate.
- 11.9 On any question submitted to a general meeting, or postal ballot, every ordinary member shall have one (1) vote, except for the chairman's casting vote; provided such member shall be in good standing.
- 11.10 All questions at any general meeting of members shall be decided by a show of hands and the majority shall bind the minority, but if demanded by ten (10) members present, a poll shall be taken and the Chairman shall direct when and in what manner it shall take place.
- 11.11 Any member desirous of bringing any special business before the Association, shall ascertain from the Secretary of the Council the date of the next general meeting, and twenty-one (21) clear days prior thereto, shall in writing notify the Secretary of the notice of motion, or special business the member requires brought before the meeting and the Secretary shall include such requests in the notice provided for in terms of clause 11.6 hereof.
- 11.12.1 Votes may be given whether personally or by proxy.
- 11.12.2 The instrument appointing a proxy shall be under the hand of the appointee, or his attorney, duly authorised on that behalf, or if such appointee is a company, under the hand of a director or its attorney.
- 11.12.3 Any major person may be appointed a proxy.

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- 11.12.4 The instrument appointing a proxy shall be deposited at the registered office of the Association prior to the commencement of the meeting.
- 11.12.5 A member may appoint a proxy for a particular meeting, or may appoint a proxy generally for all meetings of the Association.
- 11.12.6 Each and every proxy or attorney shall have the same right to attend, speak and vote at the meeting as he would have if he were himself a member.
- 11.12.7 A vote given in accordance with the terms of a power of attorney shall be valid notwithstanding the prior death of the principal or the revocation of the power unless an intimation in writing of such death or revocation shall have been received at the office of the Association before the meeting.
- 11.12.8 No objection shall be taken to the validity of any vote except at the meeting at which such vote shall be tendered and every vote not disallowed thereat shall be deemed to be valid.

12.           **NOTICES**  
A notice may be served by the Association upon any member either personally or by sending it through the post in a prepaid letter or fax, addressed to such member at such member's registered address.
- 12.1           A notice so sent through the post shall be deemed to have been received forty-eight (48) hours after the time when the letter containing the same is put into the Post Office or at the time when it is delivered  
by hand at the registered address of the member to whom such notices is directed.
- 12.2           A letter addressed to such member at the last known address shall be deemed sufficient notice to any member, to comply with clauses 12 and 12.1.

**13. LEGAL PROCEEDINGS**

- 13.1 Legal action by or against the Association shall be instituted or defended in the name of the Association. All legal documents shall be executed by one (1) of the members of the Council and the Secretary of the Association, duly authorised thereto by a resolution of the Council or in such other manner as the Council may decide from time to time.
- 13.2 This Constitution shall be governed by and interpreted in accordance with the laws of South Africa.

14. **INDEMNITY**

14.1 Every member of the Council, director and other officer or servant of the Association shall be indemnified by the Association, against all liabilities incurred by him whilst engaged in Association business and it shall be the duty of the Council out of the funds of the Association to pay all costs, losses and expenses which any such officer or servant may incur or become liable to by reason of any contract entered into or act or deed done by him as such officer or servant, or in any way in the discharge of his duties including travelling expenses, provided that such costs shall not include reimbursement for travelling and accommodation costs incurred by Councillors in attending meetings of the Council or the Association including meetings of sub-committees thereof or pursuant to the fulfilment of their duties, save as otherwise specifically approved by Council in advance.

14.2 No member of Council, director, Secretary or other officer or servant of the Association shall be liable for the acts, receipts, neglects or defaults of any other member, officer or servant, or for joining in any receipt or other act for conformity, or for loss or expense happening to the Association through the insufficiency or deficiency of title to any property acquired by order of Council for or on behalf of the Association or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Association shall be invested, or for loss or damage occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatever, which shall happen in the execution of the duties of his office or in relation thereto, unless the same happens through his own dishonesty or gross negligence.

15.

**LIQUIDATION OF ASSOCIATION**

The Association may be liquidated and wound up by resolution passed by two-thirds (2/3rds) of the ordinary members present voting therefore at a Special Meeting called for the purpose by Council after thirty (30) days prior notice; provided that not less than one-half (1/2) of the total number of ordinary members of the Association are represented at such meeting. In the event of the required number of members not being represented, the meeting shall stand adjourned pending a ballot by post of all members. If such ballot results in more than half of the members responding recording their votes in favour of liquidation, Council shall have authority to appoint liquidators.

16. **ALTERATION OF CONSTITUTION**
- 16.1 The Constitution shall not be altered or amended save by resolution duly carried by two-thirds (2/3rds) majority vote of the members represented at a special meeting called for that purpose, or by two-thirds (2/3rds) majority vote of the members responding to a postal ballot, at the Council's discretion and provided written notice of the proposed alterations or amendments shall have been given to members at least one (1) month previously.
- 16.2 Upon such alteration or amendments being made as aforesaid, the same shall be deemed and taken to be incorporated in and form part of these present, in the same manner and in all respects as though originally inserted herein and shall be binding on all members without further or special act or asset thereto.

17. **INTERPRETATION OF CONSTITUTION**

In case of doubt as to the meaning of any portion of the Constitution, the interpretation of Council shall be binding upon the members.

## ADDENDUM A

### Sabita Health, Safety and Environment Charter

This charter depicts a set of objectives that will be used as a framework for developing a schedule of requirements to endorse membership of Sabita and to formulate a certification scheme to incentivise members continually to strive for improved performance on the health, safety and environmental front.

In terms of this charter, all members of Sabita undertake to implement the *best available techniques* to protect the health, safety and well being of all employees and conserve the environment during the handling and application of bituminous materials. In order to achieve this objective in the pursuit of corporate proficiency and cost-effectiveness *all members will undertake to:*

1. ***Be compliant with*** the relevant requirements of South African ***legislation*** and associated regulations on the protection of health and safety of employees and affected parties and the environment.
2. ***Compile a*** written ***company policy*** which creates a health, safety and environmental ethos amongst all employees and embraces the principles contained within this charter.
3. ***Induct*** all new recruits in health, safety and environmental policies and procedures ***and implement schemes to train*** all employees in the risks and hazards associated with the handling and application of bituminous materials and procedures to mitigate exposure to these.
4. Take the necessary steps to protect workers against hazards by ***issuing*** them with the required ***personal protective equipment*** to handle and apply bituminous materials.
5. Identify all health and safety hazards by ***conducting risk assessments*** and developing and implementing safe work practices for all activities involving the handling and application of bituminous materials.
6. ***Report all incidents*** arising from the handling and application of bituminous materials which caused death or injury to workers or people or damage to property or the environment and report measures taken to prevent the incident from recurring.
7. ***Use, manufacture and apply materials and products in a manner which is not harmful*** to the environment or pose a health hazard to workers and communities in the proximity of the site or operation.
8. Reduce the impact of bituminous materials on the environment by ***reducing waste*** through recycling and disposing of waste at approved land fill sites.
9. ***Transport*** bituminous materials ***on vehicles which are legally compliant*** with respect to their condition, payload and driver wellness and loaded in accordance with approved codes of practice and only accept delivery of bituminous materials from vehicles which comply with these requirements.
10. ***Store bituminous binders*** in suitably designed and constructed facilities which will prevent contamination of the ground water sources and do not pose a danger to life or the environment.
11. ***Operate and maintain application plant*** in such a manner that they do not pose a danger to life and that their operation does not impact negatively on the environment.
12. ***Limit*** the generation of ***green house gasses and conserve energy*** during the manufacture and application of bituminous materials in order to preserve the environment for future generations.

Please take note that the conformance to these requirements means operating in accordance with the laws and constitution of South Africa. Sabita undertakes to develop the necessary tools to assist its members in the attainment of these objectives. Non compliance to the above principles could result in the cessation of a company's membership of Sabita.

## REGULATIONS

**Regulation 1            To govern the transfer of responsibility from an existing Council to a newly elected Council.**

- 1.1                      During the period while Council elections are being held in terms of clauses 6.1.4, 6.1.5 and 6.1.8 of the Constitution, the Council then existing shall continue to exercise all the powers vested in it in terms of clauses 6.4 and 6.5.
- 1.2                      As soon as possible after the conclusion of a ballot for election of a new Council, a meeting shall be convened by the serving chairman. Existing council members as well as new council members shall be invited to attend. As an early item of business at that meeting a proper transfer of authority shall take place and be duly minuted.

**Regulation 2            To define the procedures to be employed to**  
**(a)    elect members to Council; and**  
**(b)    insure that the ballot results in the sectoral balance**  
**of membership required by the Constitution (clause                      6.1.7).**

- 2.1                      The ballot will be carried out by the authorised representative of each member completing a ballot paper in the format attached to this regulation.
- 2.2                      The ballot paper lists each duly nominated candidate in the industrial section in which his employer falls (clauses 6.1.7 and 6.1.10).
- 2.3                      Members will be entitled to the same number of votes as there are listed nominations, even where this number exceeds the number of individuals by virtue of some of the latter being eligible in more than one industrial category.
- 2.4                      Voters should place candidates in their preferred order, i.e. first choice number 1, second choice number 2 and so on.
- 2.5                      Two scrutineers who shall not be members of Council or nominees for election to Council, shall be appointed by Council to open the ballot papers and count the votes cast. They shall determine the results in accordance with the following procedures:

- 2.5.1 The candidate in each category receiving the most first preference votes will be judged elected;
- 2.5.2 In the event that more than one vacancy is to be filled in a particular category, the candidate elected as in 2.5.1 will have his name removed from the list of candidates and the remaining candidates will be promoted to fill the preference gaps vacated by the electee;
- 2.5.3 Should a candidate be nominated in more than one industrial sector, he will be declared elected in the sector in which he received the most first preference votes. When this has been determined, his name will be removed from the other sector or sectors in which he is nominated, all affected votes will then be upgraded and the election procedure described in 2.5.1 must then be applied;
- 2.5.4 In the event of a tie in first preference votes in any of the foregoing procedures, second preference votes will then be counted. If the tie remains unbroken, third preference votes may be used, and so on.
- 2.6 The scrutineers will report the results of the election to the Chairman of the Constitutional and Electoral Sub-Committee who will inform Council accordingly.

## **APPENDIX**

The following clauses in the original Constitution were amended or added on the dates indicated:

1.	27 August 1980	Annual General Meeting
3.9	17 August 1989	Annual General Meeting
3.12	26 March 1992	Annual General Meeting
6.1.3	13 July 1982	Ballot
6.1.7	30 August 1982	Ballot
6.1.7.1	28 September 1990	Ballot
6.1.7.1.1	28 February 1991	Annual General Meeting
6.1.7.3	19 August 1988	Annual General Meeting
6.1.7.4	19 August 1988	Annual General Meeting
6.1.7.5	28 September 1990	Ballot
6.1.8	13 February 1986	Ballot
	<i>(On 17 October 1985, it was resolved by Council that clause 6.1.8 shall apply with effect from September 1984, except that</i>	
	<i>(a) The two (2) Councillors representing the bitumen producers and marketers elected in 1984 will serve for two (2) years; and</i>	
	<i>(b) The one (1) Councillor representing the tar or bitumen emulsion manufacturers and the one (1) Councillor representing the tar producers or manufacturers elected in 1985 will serve for four (4) years).</i>	
6.1.10	27 August 1980	Annual General Meeting
	30 August 1982	Ballot
	19 August 1988	Annual General Meeting
	30 August 1990	Ballot
6.1.11	13 February 1986	Ballot
6.3	30 August 1982	Ballot
	13 September 1983	Special General Meeting
6.5 to 6.13.4	19 August 1988	Annual General Meeting
6.6.4	23 March 1993	Ballot
6.6.4.2	23 March 1993	Ballot
6.6.5.2	13 September 1983	Special General Meeting
6.6.2 to 6.6.4.4	28 February 1991	Annual General Meeting
7.1	19 July 1994	Ballot
7.5 to 7.5.3	23 March 1993	Ballot
7.6	23 March 1993	Ballot
7.6	19 July 1994	Ballot
10.2	19 August 1988	Annual General Meeting
11.1	17 August 1989	Annual General Meeting
11.3	17 August 1989	Annual General Meeting

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11.8.4	28 February 1991	Annual General Meeting
12.	28 February 1991	Annual General Meeting
14.1	26 March 1992	Annual General Meeting
6.6.4	26 March 1996	Annual General Meeting
6.6.4.2	26 March 1996	Annual General Meeting
6.6.4.4	26 March 1996	Annual General Meeting
7.2	26 March 1996	Annual General Meeting
1, 3.1,3.2,3.5,3.5.1	4 April 1997	Annual General Meeting
3.6,3.7,3.8,3.9,3.10,3.11,3.12,4.1,4.3,4.7,4.8,4.9,4.12,4.13,4.14,4.15,4.16,4.17,4.18,4.19		
5.1,5.2,5.3,5.4,5.5,6.1.3,6.1.4,6.1.5,6.1.6,6.1.7,6.1.7.1,6.1.7.1.1,6.1.7.2,6.1.7.3,6.1.7.4,		
6.1.7.5,6.1.8,6.1.9,6.1.10,6.1.11,6.1.12,6.3,6.4.6,6.4.7,6.4.8,6.4.9,6.4.10,6.5.6,6.5.7,6.5.5.4.1		
6.5.5.4.2,6.5.5.4.3,6.5.5.4.4,6.5.5.5,6.5.5.6,6.5.8,7.1,7.2,7.3,7.5,8.3,8.4.2,9.1.1,9.1.2,9.1.3,		
10.1,10.2,10.3,10.4,10.5,10.6,13.1,13.2		
The name was changed from <b>The Southern African Bitumen and Tar Association</b> to <b>The Southern African Bitumen Association</b>		
10.5	May 2000	Ballot
6.1.1	3 April 2001	Annual General Meeting
6.1.2	3 April 2001	Annual General Meeting
8.1 - 8.4.2	3 April 2001	Annual General Meeting
8.1 – 8.1.2	6 March 2003	Annual General Meeting
3.5, 3.5.2, 3.5.3	4 March 2004	Annual General Meeting
7.5.1	16 March 2005	Council
6.5.5.4.1; 6.5.5.4.2; 6.5.5.4.3; 6.5.5.4.4; 6.5.5.5; 6.5.6, 12		
	30 March 2006	Annual General Meeting
6.1.3; 7.5	22 March 2007	Annual General Meeting
7.1; 7.2; 7.5; 8.1		
8.2; 8.3	13 March 2008	Annual General Meeting
Objects	18 June 2009	Annual General Meeting
6.1.10; 6/5/2/1; 6.6; 6.6.1; 6.6.2; 6.6.2.1; 6.6.2.2; 6.6.2.3; 6.6.3; 6.6.4; 6.6.4.1; 6.6.4.2; 6.6.4.3; 6.6.4.4;		
6.6.5; 6.7; 6.7.1; 6.7.2; 6.7.3; 6.7.4; 7; 7; 7.1; 7.2; 7.5; 7.6; 11.9		
	25 March 2010	Annual General Meeting