

**CONSTITUTION**

**OF THE**

**REGISTERED TRUSTEES OF**

**THE FERTILIZER ASSOCIATION TRUST**

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## **ARTICLE 1**

### **NAME**

The name of the Association shall be **“THE REGISTERED TRUSTEES OF THE FERTILIZER ASSOCIATION TRUST”** (Hereinafter referred to as the “Association”).

## **ARTICLE 2**

### **HEADQUARTERS OF THE ASSOCIATION**

The Board shall decide from time to time as to where the headquarters of the Association shall be located.

## **ARTICLE 3**

### **CORPORATE STATUS**

The Association shall be a body corporate having an existence independent of its members, with perpetual succession and with power to own and hold movable and immovable property, and all its assets shall be registered or held in the name of the Association; the individual members of the Association shall not be liable to meet the debts, engagements or liabilities of the Association, which shall be incurred in the name of the Association and the liability of the members shall be limited to the amounts due by them in respect of their annual fees or in respect of other monies payable by them in terms of the Constitution.

## **ARTICLE 4**

### **OBJECTS OF THE ASSOCIATION**

The objects of the Association shall be -

- (1) to ensure that government policy on fertilizer is conducive to the importation, manufacture and distribution and sale of fertilizer in Malawi;
- (2) to ensure that legislation in the fertilizer sector is enabling in order to protect the fertilizer dealers and consumers;
- (3) to promote local fertilizer companies registered in Malawi in order to benefit the development of the fertilizer industry and the consumers;
- (4) to act as a forum for engaging with the government, donors and other stakeholders in agriculture sector in Malawi;
- (5) to dialogue with and engage other stakeholders in the agriculture sector in Malawi;
- (6) to assist government in promoting agricultural productivity and food security in Malawi;
- (7) to develop and promote fertilizer products and usage suitable to the Malawi agro industry environment;
- (8) to ensure that fertilizer business in Malawi is conducted in an honest and transparent manner;
- (9) to act as the regulator for the fertilizer industry in Malawi; and
- (10) to do all such things as are incidental and ancillary to the attainment of the above objects.

## **ARTICLE 5**

### **INCOME, PROPERTIES AND MONIES OF THE ASSOCIATION**

- (1) The Trustees may, in accordance with appropriate accounting principles, determine whether any monies accruing to the Association are to be considered as capital or income and may apportion and blend funds, consolidate investments and determine all questions or matters arising in the administration of the Association, including the operation of bank accounts in any financial institution in Malawi or abroad.

- (2) The income, properties and monies of the Association from whatsoever source derived, shall be applied solely towards the promotion of the objectives of the Association as herein set forth and no portion thereof shall be paid or transferred directly or indirectly by way of a dividend, bonus or otherwise by way of profit to the persons who are at the time or have been members of the Association or to any other persons claiming through them, provided, however, that nothing herein contained shall prevent the payment in good faith of the out-of-pocket expenses of any officials, employees or members of the Association or the payment in good faith of remuneration to any person whomsoever in return for any services actually rendered to the Association, provided that such amount falls within the approved budget.
- (3) An asset register shall be drawn up by the secretariat and at all times maintained, to be recorded accurately.
- (4) All costs, charges and expenses of the Association shall first be paid out of the incomes of the funds of the Association and out of capital of the Funds of the Association unless such funds are inadequate for the requisite purposes. When inadequate, it shall be the duty of the Directors to raise such funds from all possible sources, e.g. donors, NGOs, former members and current members.
- (5) In carrying out their duties, the Trustees or any one of them shall not be liable to the Association for any loss which may occur as a result of any investment made in good faith by the Trustees or occasioned by any mistake or omission made in good faith by the Trustees or any of them as a result of any negligence, dishonesty or fraud of any agent or employee of the Association, unless such loss arises from the neglect, dishonesty or fraud of the Trustees or any of them.

## **ARTICLE 6**

### **MEMBERSHIP**

Membership of the Association shall be open to-

(1) **Members**

Members shall be all persons or nominated representatives of body corporates who manufacture fertilizer through granulation or blending of fertilizer for the Malawi agricultural sector and for exports. Further, they shall be persons or nominated persons who are involved in the processing, packing, distribution, research and/or marketing of fertilizer and who are not themselves manufacturers.

(2) **Special Members (Trustees)**

Special members (Trustees) shall be any persons who, in the sole discretion of the Board of Directors, merit membership by virtue of special qualifications or experience, of value to the fertilizer industry.

(3) **Honorary Life Members**

Honorary life members shall be members who in recognition of special or extraordinary services rendered to the fertilizer industry, are appointed honorary life members.

(4) A person may only be a member in a single membership category.

## **ARTICLE 7**

### **APPLICATION FOR MEMBERSHIP**

(1) Applications for membership shall be made in writing on the prescribed form accompanied by the entrance fee provided for in the membership terms and conditions of the fertilizer association, to the Board of Trustees who in their sole discretion shall be entitled to accept or reject any such application, without obligation to supply reasons.

(2) A register of members shall be kept by the Executive Director or offices of the Association.

## **ARTICLE 8**

### **VOTING RIGHTS OF MEMBERS**

Only producer and non-producer members, in good standing (i.e. members who have paid their annual fees and levies in respect of the current period) shall be eligible to hold any office in the Association. Each such member shall be entitled to one vote only. No member, duly authorised by proxy in writing shall be entitled to vote on behalf of more than two members of the Association not present at any meeting of the Association.

## **ARTICLE 9**

### **TERMINATION OF MEMBERSHIP**

Membership of the Association shall terminate -

- (a) on the date that a member ceases to qualify as provided for in paragraphs 6.1 and 6.2 above;  
or
- (b) on the expulsion and removal of a member from the register of members in terms hereof; or
- (c) when a member is, under any law in force in Malawi, adjudged or otherwise declared to be of unsound mind; or
- (d) when a member is bankrupt, having been adjudged or otherwise declared to be bankrupt under any law in force in Malawi; and
- (e) when a member or his agent fails to pay any sum due to the Association according to the Rules of the Association and has been expelled by the Board.

## **ARTICLE 10**

### **MEMBERSHIP FEES, ANNUAL FEES AND LEVIES**

- (1) All new members with the exception of honorary members shall pay such membership fees as determined by the Board.

- (2) Members shall pay an annual fee which may be determined by the Board and prescribed in the Rules of the Association.
- (3) Fees shall be determined by the Board and changes implemented only at the Annual General meeting.

## **ARTICLE 11**

### **RESIGNATION, SUSPENSION AND EXPULSION OF MEMBERS**

- (1) A member shall be entitled to resign at any time provided that he shall have notified the Association in writing, a month before he is due to, of his intention to do so.
- (2) The Board of Directors shall be entitled to suspend or expel and remove from the register of members, any member who, without good cause:
  - (a) breaches any of the provisions of this Constitution and/or the Rules of the Association; or
  - (b) fails to attend three consecutive meetings of the board for which he has had notice
  - (c) fails to discharge his liability in respect of any monies due by him in terms of the Constitution.
- (3) Any suspension of membership may be instituted with obligation to provide reasons by the board. During the said period of suspension, the member affected shall not be entitled to exercise his voting rights, attend Association meetings, and receive publications or information as provided by the Association.
- (4) Any such resignation, suspension or expulsion shall not thereby release such defaulting member from his financial liability be they statutory or otherwise to the Association and neither shall such resignation and/or defaulting member be entitled to any refund of his entrance or annual fee, or any part thereof.



## **ARTICLE 12**

### **BOARD OF DIRECTORS**

- (1) The Association shall be administered by a Board of Directors consisting of not less than three and not more than ten members at a time.
- (2) The Directors shall appoint a Chairperson, a Vice-Chairperson, a Secretary and a Treasurer from amongst their number.
- (3) A Director shall hold office for a period of three years but shall be eligible for re-election for another three year term at the end of his tenure

## **ARTICLE 13**

### **TERMS OF OFFICE OF THE CHAIRMAN AND EXECUTIVE DIRECTOR**

- (1) The Chairman's term of office should preferably be two years, but should not exceed three years. Eligibility for re-election cannot be considered until a two year time lapse has occurred since the previous term of office.
- (2) The lapse period may be disregarded only by approval or special request by the board of Directors should the continuation of the Chairman be in the interest of the association or the industry, in the case of a crisis situation arising.
- (3) The Chief Executive Officer, who shall be a paid employee of the Association and who shall hold office for such period as the Board of Directors may decide.

## **ARTICLE 14**

### **VOTING RIGHTS OF DIRECTORS**

- (1) Directors shall each have 1 (ONE) vote at meetings of the Board of Directors and shall be entitled to empower in writing any serving Director who must be present at the meeting to vote at meetings of the Board on his behalf.
- (2) A quorum at a Board meeting is deemed necessary. A quorum shall consist of half the total number of serving Directors, plus one, present in person.
- (3) A declaration of interest form shall be completed and continually updated by all serving Directors and be lodged within the secretariat.
- (4) The Directors may at any time and for any period invite any person to attend any meeting of the Directors and take part in the deliberations of the meeting, but such person shall not be entitled to vote at the meeting.

## **ARTICLE 15**

### **PROCEEDINGS AT MEETINGS OF THE BOARD**

- (1) The Board shall meet or confer at least three times per year and as often and at such times as the Board may deem necessary for the despatch of business and may adjourn or otherwise conduct its proceedings in such a manner as it may determine. Matters arising at any meeting shall be decided by a majority of votes, and in the case of an equality of votes, the Chairman shall have a second or casting vote.
- (2) A two thirds majority of the Directors present, in person, at any meeting shall be required in respect of-
  - (a) all fiscal matters to be decided upon by the Board,
  - (b) all resolutions altering the objects of the Association and
  - (c) all resolutions for amalgamating the Association with any other Association or body.

- (3) A member of the board, duly seconded, may, and the Secretary shall, on the written requisition of such members of the Board, summon a meeting of the Board.
- (4) In the absence of the Chairperson, the Directors shall elect amongst themselves one person to preside at the meeting
- (5) The Board shall ensure that proper minutes of all meetings are kept and the minutes of each meeting are submitted for approval to the next meeting of the Board, and thereafter be signed by the Chairman.
- (6) The Board shall in addition ensure that accurate records are kept of all financial and contractual transactions.
- (7) Any decision of the Directors made or taken otherwise in accordance with the provisions of the Article shall be null and void.

## **ARTICLE 16**

### **POWERS OF THE BOARD OF DIRECTORS**

- (1) The business of the Association shall be administered by the Board who may exercise all such powers of the Association as are not by these presents required to be exercised by the Association in general meeting, subject nevertheless, to such directions as may from time to time be given to the Board by the Association in general meeting. No direction by the Association in general meeting shall invalidate any prior act of the Board which would have been valid if such direction had not been given.
- (2) The Board may appoint a Chief Executive Officer and other permanent staff for such period as the Board may deem necessary to administer and manage the day to day affairs of the Association.
- (3) The Board may delegate any of its powers to sub-committees, consisting of such members or member or such other persons as it may deem fit. Any sub-committee, shall in the exercise of the powers also

delegated, conform to any directions that may have been given to it by the Board and shall, subject to such directions, conduct its proceedings in such manner as it may itself determine.

- (4) The Board shall have power to frame the Rules in terms of this Constitution providing for the election and qualifications of members and Directors of the Association, the amounts of monies payable, the qualifications for membership, the use of the Association's property and facilities, the formation, control and management of the business and affairs of the Association generally and make amendments and additions thereto from time to time.
- (5) The Board shall have the power to suspend or terminate a member's membership, with obligation to provide reasons, on the grounds set out herein and in the Rules. Such expelled or suspended member shall have the right to appeal to a meeting of members in the area in which he conducts his fertilizer business. Such meeting shall be called for by the Secretary.
- (6) An Executive Committee comprising of the-
  - (a) Chairman
  - (b) Vice-Chairman
  - (c) Chief Executive Officer, and
  - (d) two other members elected by the Board,

shall be responsible for the detailed administration of the affairs of the Association. The Executive Committee shall meet at least 3 times per year and on an ad-hoc basis as and when necessary and are empowered to make decisions in the name of the Board. The Chief Executive Officer shall ensure that proper minutes of Executive Committee meetings are kept and circulated to both Executive Committee and Board Members prior to their next meetings.

- (7) The board shall cooperate with the Government, donors and other organizations and agencies in matters relating to the objects of the Association as well as liaising and working with other stakeholders in the agricultural sector

- (8) The board shall determine and review the policies of the association with regard to its purposes and functions as set out in this constitution as well to evaluate the performance of the management of the Association
- (9) The board shall make by-laws and regulations for the good governance of the Association, as well as do all such acts, matters and things as the Trustees may deem necessary in order to achieve and give effect to the objectives of the Association.

## **ARTICLE 17**

### **COMMITTEES AND CONFIDENTIALITY**

- (1) The Directors shall have the power to appoint committees consisting of such number of Directors or other persons as the Directors shall consider appropriate and to delegate to such committees the powers and duties exercised by the Trustees under this Constitution except the power to make rules.
- (2) Every Director, donor, co-opted person or consultant to the Association who attends a meeting of the Directors or of a committee of the Directors shall regard and deal with as confidential all information which may come to his knowledge in the course of his dealings with the Association.
- (3) The common seal of the Association shall not be affixed to any instrument except by the Directors for the time being authorised in that behalf by the Board of Directors and all concerned parties shall sign the instrument to which the common seal is affixed in the presence of each other.
- (4) The common seal of the Association shall be kept under lock and key and there shall be kept and maintained a register of all instruments to which the seal has been affixed.

## ARTICLE 18

### ANNUAL GENERAL AND SPECIAL MEETINGS

- (1) Annual General Meetings and Special Meetings of the Association shall be convened by notice in writing to each member at least 14 (FOURTEEN) days prior to the date of the meeting, specifying the date, place, time and agenda of the meeting.
- (2) The Directors shall register with the Registrar General an address in Malawi at which service of process and notices may be affected by or against them.
- (3) The Secretary will assume the normal responsibility of convening notice for the Annual General Meetings and Special Meetings.
- (4) The Annual General Meeting shall be held once in every year at such time and place as may be determined by the Board, provided that every Annual General Meeting shall be held not more than nine months after the end of every financial year of the Association and within not more than fifteen months after the date of the last meeting preceding such meeting of the Association. A quorum shall constitute all those members present at the Annual General Meeting. The presiding officer of the meeting shall be the Chairman of the Board of Directors.

The purpose of the meeting will be -

- (a) to receive and consider the annual report of the Chairman of the Board;
- (b) to receive and approve the annual audit report of the previous financial year;
- (c) to receive and approve current financial statements;
- (d) to appoint auditors for the ensuing year;
- (e) to discuss any proposals put forward by any member of the Association, and to officially record any votes, should voting be required on any issue;
- (f) to confirm the appointment of Directors of the Board as provided for in Article 12;

- (g) to confirm the appointment of the Chairman of the Board of Directors as provided for in Articles 13.1 and 13.2;
  - (h) to approve changes to the Constitution if necessary;
  - (i) to consider matters of general interest;
  - (j) to ensure that an attendance register is completed; and
  - (k) to record proceedings by the taking of minutes for permanent safekeeping.
- (5) Special General Meetings may be called by the Chairman and one member of the Board or at the request of ten members who shall deliver such a request to the Chairman or Executive Director or duly appointed official in writing and the Special Meeting so called for shall only deal with the specific matter for which the meeting was called or requested.
- (6) Should there not be a quorum for Annual General Meetings, further notice of fourteen days shall be given of a general meeting and if within one and half hour of the time appointed for such meeting a quorum is not presented, the members then present shall form a quorum.
- (7) Any member present shall be entitled to request a secret ballot.
- (8) In the case of an equality of votes whether on a show of hands or on a poll, the Chairman of the meeting at which the voting takes place shall be entitled to a second or casting vote.

## **ARTICLE 19**

### **AMENDMENT OF THE CONSTITUTION**

No alteration to the Constitution shall be made, except at an Annual General Meeting, of which at least twenty one days notice in writing specifying the proposed amendment to the Constitution, has been sent to all members and unless the amendment be approved by a majority of two thirds of those present in person and voting at the meeting.

## **ARTICLE 20**

### **BOOKS OF ACCOUNT**

The Association shall keep proper books of account which shall, during business hours, be available, to any member who shall be entitled to make copies of or extracts there from. The financial year of the Association shall commence on the 1<sup>st</sup> day of July in each year and end on the 30<sup>th</sup> day of June the following year. The books of account of the Association shall be audited by the independent auditors appointed by the Board and confirmed at the Annual General Meeting prior to the start of the new financial year.

## **ARTICLE 21**

### **DISSOLUTION OF THE ASSOCIATION**

- (1) The Association shall be dissolved if at least two thirds of those entitled to vote at the Annual General Meeting, or special meeting convened for such purpose, vote in favour of such dissolution.
- (2) No motion for dissolution of the Association shall be considered unless all members are advised thereof at least three months prior to the consideration of the motion.
- (3) If upon liquidation or dissolution of the Association, there remains any property whatsoever, after the satisfaction of all the debts and liabilities of the Association, it shall not be paid to or distributed amongst the members of the Association, but shall be given or transferred to some other institution or institutions having objectives similar to those of the Association to be determined by the members of the Association at or before the time of dissolution.