



THE NEW ZEALAND WINE COMPANY  
LIMITED

**CONSTITUTION OF  
THE NEW ZEALAND WINE COMPANY LIMITED**

Certified as Constitution of the Company

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Mark Peters - Chairman

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# CONSTITUTION OF THE NEW ZEALAND WINE COMPANY LIMITED

## 1. STATUS, DEFINITIONS AND INTERPRETATION

### Registration

- 1.1 The company is registered under the Companies Act 1993 and is regulated by the Act and this constitution (to the extent it is in accordance with the Act), subject to clause 1.6.

### Powers and capacity

- 1.2 The company, the board, each director, and each shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

### Definitions

- 1.3 In this constitution, the following words and expressions have the meanings set out next to them:

<b>"Act"</b>	means the Companies Act 1993.
<b>"board"</b>	means the directors numbering not less than the required quorum acting as the board of directors of the company.
<b>"company"</b>	means The New Zealand Wine Company Limited.
<b>"director"</b>	means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.
<b>"dividend"</b>	means a distribution by the company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.
<b>"Listing Rules"</b>	means the listing rules governing the NZAX as amended from time to time.
<b>"minimum holding"</b>	has the meaning given to that term from time to time under the listing rules governing NZX' NZSX.
<b>"NZAX"</b>	means the alternative market operated by NZX.
<b>"NZX"</b>	means New Zealand Exchange Limited.
<b>"ordinary resolution"</b>	means a resolution of shareholders approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.
<b>"special meeting"</b>	means any meeting (other than an annual meeting) of shareholders entitled to vote on an issue, called at any time by the board.

**"special resolution"** means a resolution of shareholders approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.

### **Interpretation**

#### 1.4

- a. Words importing the singular number include the plural number and vice versa.
- b. A reference to a person includes any firm, company or other body corporate.
- c. Subject to the above, expressions contained in this constitution which are defined in:
  - i. the Listing Rules (whether or not expressed with an initial capital letter) bear the same meaning as in the Listing Rules; and
  - ii. the Act (whether or not expressed with an initial capital letter) bear the same meaning as in the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.
- d. A reference to a clause means a clause of this constitution.
- e. The clause headings are included for the purposes of convenience and do not affect the construction of this constitution.

### **Incorporation of provisions**

#### 1.5

This constitution is deemed to incorporate all provisions of the Listing Rules required under the Listing Rules to be incorporated by reference, as those provisions apply from time to time.

### **Compliance with Listing Rules**

#### 1.6

For so long as the company is listed, the company shall comply with the Listing Rules. The Listing Rules prevail to the extent of any inconsistency with this constitution.

### **NZX rulings**

#### 1.7

If NZX has granted a ruling in relation to the company authorising any act or omission which in the absence of that ruling would be in contravention of the Listing Rules or this constitution, that act or omission shall, unless a contrary intention appears in this constitution, be deemed to be authorised by the Listing Rules and by this constitution.

## **2. SHARE ISSUES**

### **Rights and powers**

#### 2.1

- a. On adoption of this constitution, the company has not issued shares in different classes or with rights different to those standard rights set out in Section 36(1) of the Act.
- b. This constitution does not set out types of shares that the board may, or may not, issue without shareholder approval.

## 2.2 Issue of shares

- a. Section 45 of the Act shall not apply to the issue of any shares.
- b. Further shares may be issued ranking equally with, or in priority to, existing shares and in such event the provisions of Section 117 of the Act do not apply.

### Disposal of unwanted new shares

- 2.3 New shares offered to shareholders and not accepted within the prescribed time may be disposed of by the board in such manner as the board thinks most beneficial to the company.

## 3. CALLS ON SHARES

### Board may make calls

#### 3.1

- a. The board may make such calls as the board thinks fit on the shareholders in respect of any moneys unpaid on their shares and not by the conditions of issue made payable at a fixed time or times.
- b. Shareholders must comply with the terms of payment set out in the board resolution.
- c. A call may be revoked or postponed by the board.

### Notice of call

#### 3.2

- a. Notice and particulars of call must be given to the holder of those shares at the time the call is made.
- b. The company is not required to give notice and particulars of call to a subsequent holder of those shares.

### Liability

#### 3.3

- a. The joint holders of a share are jointly and severally liable to pay all calls in respect of those shares.
- b. The liability for a call which has become due and payable attaches to the holder of those shares and not a prior holder of the shares.

### Interest and Expenses

- 3.4 If a call is not paid, the person from whom the sum is due must pay:

- a. all interest on that sum from the day payment was due to the day of actual payment at such rate as the board may determine;
- b. all expenses which the company has or may incur by reason of non-payment of the call.

The board may waive payment of all or part of that interest or expense.

### **Instalments**

- 3.5 Any sum which by the terms of issue of a share becomes payable on issue or at any fixed time will, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue it becomes payable. In case of non-payment all the relevant provisions of this constitution relating to payment of interest and expenses, forfeiture, or otherwise will apply as if the sum had become payable by a call duly made and notified.

### **Different amounts**

- 3.6 The board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **4. SUSPENSION OF RIGHT TO DISTRIBUTIONS, LIEN AND FORFEITURE**

### **Notice of suspension of rights to distributions**

- 4.1 If a shareholder fails to pay any call or instalment of a call on the day payment is due, the board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, suspend payment of any distributions payable to the shareholder until so much of the call or instalment as is unpaid together with any interest and expenses pursuant to clause 3.4 (Interest and Expenses) have been paid to the company in full.

### **Application of suspended distributions**

- 4.2 All distributions which would have been payable in respect of shares which are subject to a suspension of the right to dividends or distributions must be withheld and applied by the company to reduce the amount owing under the call, including amounts owing under clause 3.4 (Interest and Expenses).

### **Liability not discharged by suspension of right to distributions on transfer of shares**

- 4.3 A shareholder whose shares have the right to distributions suspended remains liable to the company for all money owing under the call. That liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

### **Lifting of suspension of right to distributions**

- 4.4 When the total distributions withheld and applied under clause 4.2 (Application of Suspended Distributions) equal the total amount owing under the call, including amounts owing under clause 3.4 (Interest and Expenses), the suspension of the right to distributions will be lifted and all rights to be paid dividends on the shares will resume.

## Liens

### 4.5

- a. The company has a first and paramount lien on every share registered in the name of a shareholder (whether solely or jointly with others) and on the proceeds of sale of those shares, for:
- i. all money (whether presently payable or not) payable in respect of shares held by the shareholder; and
  - ii. such amounts (if any) as the company may be required to pay under any statute or regulation in respect of shares of a deceased or other shareholder,
- whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- b. The lien extends to all distributions from time to time declared in respect of the shares.

### Sale on exercise of lien

### 4.6

- The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien. No sale may be made:
- a. unless a sum in respect of which the lien exists is due and payable; and
  - b. until the expiration of 14 days after a notice which requires payment of the amount owing in respect of which the lien exists, has been given to the registered shareholder at the time or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.

### Application of proceeds of sale

### 4.7

- The net proceeds of the sale of any shares sold for the purpose of enforcing a lien must be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, must be paid to the former shareholder.

### Certificate that power of sale has arisen

### 4.8

- A certificate signed by a director stating that the power of sale provided in clause 4.6 of this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.

### Giving effect to sale

### 4.9

- In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 4.6 (Sale on Exercise of Lien) the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in

reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the company exclusively.

## **5. DISTRIBUTIONS TO SHAREHOLDERS**

### **The board may authorise distributions**

- 5.1 The board may authorise a distribution by the company to shareholders in accordance with the Act.

### **Dividends on shares not fully paid up to be paid pro rata**

- 5.2
- a. All dividends on shares not fully paid up must be authorised and paid in proportion to the amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares. This provision does not apply where shares have been issued with special rights as to dividends.
  - b. No amount paid or credited as paid on a share in advance of calls is to be treated for these purposes as paid on the share. All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but if any share is issued on terms providing that it ranks for dividend as from a particular date that share ranks for dividend accordingly.

### **Payment by automatic payment cheque or warrant**

- 5.3
- a. Any dividend, interest, or other money payable in cash in respect of shares may be paid by automatic payment to any bank nominated in writing by the shareholder or by cheque sent through the post to the registered address of the holder, or in the case of joint holders, to the registered address of that one of the joint holders who is first named in the share register or to such person and to such address as the holder or joint holders may in writing direct.
  - b. Every such cheque must be made payable to the order of the person to whom it is sent. Any one of 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of shares held by them as joint holders.

### **No interest**

- 5.4 No dividend bears interest against the company.

### **Unclaimed dividends**

- 5.5
- a. All dividends unclaimed for 1 year after having been authorised may be invested or otherwise made use of by the board for the benefit of the company until claimed. All dividends unclaimed for 5 years after having been declared may be forfeited by the board for the benefit of the company.
  - b. The board may, however, annul any such forfeiture and agree to pay a claimant who produces, to the board's satisfaction, evidence of entitlement to

the amount due to such claimant, unless in the opinion of the board such payment would embarrass the company.

## **6. COMPANY PURCHASING OWN SHARES**

### **Acquisition of company's own shares**

- 6.1 The company may purchase or otherwise acquire shares issued by it in accordance with the Act. The board may make an offer to acquire shares from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

### **Treasury Stock**

- 6.2 Shares acquired by the company under clause 6.1 may be held by the company in accordance with Sections 67A – 67C of the Act.

### **Redemption of shares**

- 6.3 The company may issue redeemable shares. If the company issues redeemable shares, the company may redeem those shares in accordance with their terms of issue.

## **7. TRANSFER OF SHARES**

### **Share register**

- 7.1 The company will maintain a share register that records the shares issued by the company and states any restrictions or limitations on their transfer and where any document that contains the restrictions or limitations may be inspected.

### **Transfer of shares**

- 7.2 A shareholder may transfer the shareholder's shares:
- a. by signing an instrument of transfer and delivering the same to the company or the agent of the company who maintains the share register. The form of transfer must be signed by the transferee of the shares if registration as holder of the shares imposes a liability to the company on the transferee; or
  - b. in accordance with any system of transfer approved by legislation.

### **Registration of transfer**

- 7.3 The transferor of a share shall be deemed to remain the holder of the share until the name of the transferee is entered in the share register in respect of the transfer.

### **No restriction on transfer**

- 7.4 Subject to the provisions of the Act, and to clause 7.7, the company shall not impose any restriction on the right of a holder of a share of the company to transfer that



share or upon the registration of a properly completed transfer of shares of the company.

### **Form of transfer**

- 7.5 Every form of transfer shall either comply with the provisions of the Securities Transfer Act 1991 where applicable or be in any usual or common form and (without limiting clause 7.2) a transfer may be completed by any approved system of transfer by electronic means including the system commonly referred to as FASTER operated by NZX.

### **Sale of minimum holding**

- 7.6
- a. The board may give three months notice in writing to a shareholder who holds shares which are less than a minimum holding, of the board's intention to sell such shares;
  - b. The notice pursuant to paragraph a shall advise the shareholder of the board's intention to proceed with the sale of the said shares unless the shareholder acquires further shares so that the total of the shares held by the shareholder is not less than a minimum holding;
  - c. At the expiry of the three month notice period referred to in paragraph a, the board may arrange for the sale of the shareholder's shares (through NZX or in some other manner approved by NZX) if there has not been presented to the company for registration a transfer of shares to the shareholder, which together with the shares already held by the shareholder will be equal to or more than a minimum holding;
  - d. If the board sells the shares comprised in the notice, then the board may appoint a director to execute a transfer of the shares and to receive the consideration from the transferee on behalf of the shareholder;
  - e. The company may deduct the reasonable expenses of sale of the shares from the proceeds of sale and shall thereafter pay the net proceeds of sale to the shareholder;
  - f. The transferee of any shares sold pursuant to this clause 7.6 shall not be bound to see the application of the purchase moneys and the transferee's title to the shares shall not be affected by any irregularity or invalidity of the sale.

### **Directors' right to refuse registration**

- 7.7 The board may refuse or delay the registration of a transfer of shares:
- a. if the company has a lien over the shares; or
  - b. if the registration of the transfer, together with the registration of any further transfer or transfers then held by the company and awaiting registration, would result in the proposed transferee holding shares of less than the minimum holding; or
  - c. with the approval of NZX, if the transfer is for shares of a class that is not quoted.

**8. DELETED**

**9. SHAREHOLDERS RIGHTS AND OBLIGATIONS**

**Meetings of shareholders**

- 9.1 The provisions of the First Schedule to this constitution shall govern proceedings at meetings of shareholders.

**10. POWERS AND DUTIES OF THE BOARD**

**Management by the Board**

- 10.1 The business and affairs of the company shall be managed by or under the direction or supervision of the board which shall have all the powers necessary for managing and for directing and for supervising the management of the business and affairs of the company, except to the extent the Act or this constitution provides otherwise.

**Power to Delegate**

- 10.2 Subject to the provisions of the Act, the board may delegate any of its powers.

**11. APPOINTMENT, ROTATION AND REMOVAL OF DIRECTORS**

**Number and Residence**

- 11.1 The minimum number of directors (other than alternate directors) is 3. The maximum number of directors (other than alternate directors) may be determined from time to time by the board, and unless so determined, is 8. At least two directors shall be ordinarily resident in New Zealand.

**Vacancies and Reduction of Numbers**

- 11.2 Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by clause 11.1 as the minimum number of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a meeting of shareholders but for no other purpose.

**Nominations as Directors**

- 11.3
- a. No person (other than a director retiring at the meeting) shall be elected as a director at a meeting of shareholders unless that person has been nominated by a shareholder entitled to attend and vote at the meeting.
  - b. There shall be no restriction on the persons who may be nominated as directors nor shall there be any pre-condition to the nomination of a director other than that the nomination complies with the time limits set forth in this clause 11.

- c. The opening date (if any) for nominations in any year shall be not later than three months, and the closing date for nominations shall be not earlier than two months (in that year), prior to the date of the meeting at which the election is to take place. Notice of every nomination received by the company before the closing date for nominations shall be given by the company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.

### **Individual Voting**

- 11.4 No resolution to appoint or elect a director (including a resolution to re-elect any director under clause 11.6) shall be put to the holders of shares of the company unless:
- a. the resolution is for the appointment of one director; or
  - b. the resolution is a single resolution for the appointment of two or more directors and a separate resolution that it be so voted on has first been passed without a vote being cast against it;

but nothing in this clause 11.4 shall prevent the election of two or more directors by ballot or poll.

### **Board May Appoint Directors**

- 11.5 The board may at any time appoint a person to be a director either as an additional director or to fill a casual vacancy.

### **Board Appointee to Retire**

- 11.6 Any person who is appointed a director by the board shall retire from office at the next annual meeting of the company, but shall be eligible for re-election at that next meeting.

### **Rotation**

- 11.7 Subject to clauses 11.8 and 11.11, at least one-third of the directors or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected. As between persons who became directors on the same day, those to retire shall unless agreed otherwise, be determined by lot.

### **Exceptions to Rotation**

- 11.8 The following directors shall be exempt from the obligation to retire pursuant to clause 11.7:
- a. directors appointed by the board who are subject to re-election pursuant to clause 11.6; and
  - b. one executive director (if any).

The director referred to in (a) shall be excluded from the number of directors upon which the calculation for the purposes of clause 11.7 is based. Any director referred to in (b) shall be included in that number.

### **Removal of Directors**

- 11.9 A director may be removed from office by ordinary resolution passed at a meeting called for that purpose or for purposes that include the removal of the director. The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director.

### **Director Ceasing to Hold Office**

- 11.10 The office of director is vacated if the person holding that office:
- a. resigns in accordance with the Act; or
  - b. is removed from office in accordance with the Act or this constitution; or
  - c. becomes disqualified from being a director pursuant to the Act; or
  - d. dies; or
  - e. acts in a manner which is contrary to any statutory provision or obligation, or contrary to any policy of the board, and the board resolves that the office be vacated; or
  - f. is absent for more than three consecutive meetings of the board, without the board's permission and the board resolves that the office be vacated; or
  - g. retires from office, and is not re-elected, under this clause 11.

### **Retirement of Directors**

- 11.11 Any director who attains the age of 70 years while holding office shall automatically cease to hold office at the conclusion or adjournment of the annual meeting next following the director attaining that age. Any such director shall be taken into account in determining the number of directors to retire by rotation at the annual meeting but shall not be counted as one of the directors retiring by rotation at that meeting.

### **Existing Directors**

- 11.12 The persons holding office as directors of the company on adoption of this constitution continue in office and are deemed to have been appointed in accordance with this constitution. Similarly, the chairperson of the board continues in office and is deemed to have been appointed as chairperson in accordance with this constitution.

## **12. EXECUTIVE DIRECTOR**

### **Board may Appoint Executive Director**

- 12.1 The board may from time to time appoint one or more of its members to the office of an executive director (by whatever name called) for such period not exceeding five years at any one time as the board may think. Every executive director shall be liable to be dismissed or removed by the board. The board may enter into an agreement on behalf of the company with any person who is, or is about to become, an executive director, with regard to the terms and conditions of that person's employment. The remedy of any person appointed as executive director for any breach of the agreement shall be in damages only, and that person shall have no right to claim to continue in office contrary to the will of the board of the company. Any executive director shall immediately cease to be an executive director if he or she ceases to hold office as a director for any cause.

#### **One Executive Director not to Retire by Rotation**

- 12.2 One executive director designated by the board shall not be subject to retirement by rotation at the annual meeting of the company. The executive director shall be taken into account in determining the rotation for retirement of directors and the number of directors to retire. Subject to the provisions of any contract between the executive director and the company, the executive director shall be subject to the same provisions as to resignation and removal as the other directors of the company.

#### **Remuneration of Executive Director**

- 12.3 The remuneration of an executive director shall from time to time be fixed by the board and notwithstanding clause 14.1 may be by way of fixed salary or may be linked in some way to the performance of the company by participation in its profits or by either or both those modes.

#### **Board may Confer Powers on Executive Director**

- 12.4 The board may from time to time entrust to, and confer upon, any executive director such of the powers exercisable under this constitution and the Act by the board, as it thinks fit, and may confer such powers for such time and upon such terms and conditions and with such restrictions as it thinks fit. The board may revoke, withdraw, alter or vary all or any of the powers conferred upon the executive director.

### **13. ALTERNATE DIRECTORS**

#### **Appointment**

- 13.1 Any director may at any time appoint any person not being an existing director, who is approved by a majority of the board, as an alternate director of the company and may at any time remove from office any alternate director so appointed. No director shall appoint a deputy or agent otherwise than by way of appointment of an alternate director. An alternate director shall not be entitled to receive any remuneration from the company.

#### **Notices**

- 13.2 An alternate director shall (subject to such person giving to the company an address within New Zealand at which notices may be served upon such person) be entitled to receive notices of all meetings of the directors, and to attend and vote as a director at any meeting at which the director appointing the alternate director is not personally

present and to generally perform all the functions of a director in the appointing director's absence.

### **Cessation of Appointment**

#### **13.3**

- a. An alternate director shall ipso facto cease to be an alternate director if the person appointing the alternate director ceases for any reason to be a director otherwise than by retiring and being re-elected at the same meeting.
- b. The appointment of an alternate director may be revoked by a majority of the directors other than the appointing director.

### **Rights and Powers of Alternate Director**

- 13.4** Unless otherwise provided by the terms of appointment, and subject to clause 13.1 an alternate director shall have the same rights, powers and privileges (including the right to receive notices of meetings of directors but excluding the right to be elected as chairperson and excluding the power to appoint an alternate director) and shall discharge all the duties of, and be subject to the same provisions as, the director in whose place the alternate director acts.

## **14. DIRECTORS' REMUNERATION**

### **Fixing New Remuneration**

- 14.1** No remuneration shall be paid to a director in his or her capacity as a director unless that remuneration has been authorised by an ordinary resolution. Each such resolution shall express directors' remuneration as either:
- a. a monetary sum per annum payable to all directors taken together; or
  - b. a monetary sum per annum payable to any person who from time to time holds office as a director.

### **Increase in Remuneration**

- 14.2** If remuneration is expressed in accordance with clause 14.1 (a), then in the event of an increase in the total number of directors holding office, the directors may, without the authorisation of an ordinary resolution, increase the total remuneration by such amount as is necessary to enable the company to pay to the additional director or directors remuneration not exceeding the average amount then being paid to each of the other non-executive directors (other than the chairman).

### **Notice to be Given**

- 14.3** No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of shareholders unless notice of the amount of increase has been given in the notice of meeting.

### **Executive Directors**

- 14.4** Nothing in this clause 14 shall affect the remuneration of executive directors in their capacity as executives.

### **Payment upon Cessation of Office**

- 14.5 The company may make a payment to a director or former director, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that director, only if the payment is authorised by an ordinary resolution.

Nothing in this clause 14.5 shall affect any amount paid to an executive director upon or in connection with the termination of his or her employment with the company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a director to a superannuation scheme.

### Special Remuneration

- 14.6
- a. Subject to the other provisions of this clause 14, the directors may award special remuneration out of the funds of the company to any director rendering any special service in going abroad or otherwise for any of the purposes of or in the interests of the company or for undertaking any work additional to that required of the other directors.
  - b. The directors shall be entitled to be paid by the company all reasonable travelling, hotel and other expenses incurred by them in and about the business of the company, including their expenses of travelling to and from board or committee meetings.
  - c. For the purposes of this clause 14.6, the word "*remuneration*" shall not be deemed to include any contribution or payment made by the company to any scheme or fund established for the purpose of providing a pension, superannuation fund or annuity or life assurance for or for the benefit of any director or the widow or other dependant of any such director.

### Other offices with **company** held by director

- 14.7
- a. Any director may act by himself or herself or by the director's firm in a professional capacity for the **company**, and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor to the **company**.
  - b. A director may hold any other office or place of profit in the **company** (other than the office of auditor) in conjunction with the director's office of director for such period and on such terms (as to remuneration and otherwise) as the board may determine.
  - c. Other than as provided in the Act, a director is not disqualified by virtue of his or her office from entering into any transaction with the **company**. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the **company**.

### Loans and Guarantees

- 14.8 The board shall not authorise:
- a. The making of loans by the company to a director; or

- b. The giving of guarantees by the company for debts incurred by a director unless such action is authorised by an ordinary resolution.

## 15. PROCEEDINGS OF THE BOARD

### Second Schedule

- 15.1 The provisions of the Second Schedule to this constitution govern the proceedings of the board. The Third Schedule to the Act shall not apply to the company.

## 16. INDEMNITY AND INSURANCE

### Indemnity of directors and employees

- 16.1 The **company** is authorised to indemnify every director or employee of the **company** or a related **company** for any costs incurred by him or her in any proceeding:
  - a. That relates to liability for any act or omission in his or her capacity as a director or employee; and
  - b. In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

### Type of Liability

- 16.2 The **company** is authorised to indemnify every director or employee of the **company** or a related **company** in respect of:
  - a. Liability to any person other than the **company** or a related **company** for any act or omission in his or her capacity as a director or employee; or
  - b. Costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under paragraph a.,

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the **company** or related **company**.

### Insurance of directors and employees

- 16.3 The **company** may, with the prior approval of the board, effect insurance for a director or for an employee of the **company** or a related **company** in respect of:
  - a. Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
  - b. Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability under paragraph a; or
  - c. Costs incurred by that director or employee in defending any criminal proceedings that have been brought against that person in relation to any act or omission in his or her capacity as a director or employee, and in which he or she is acquitted.



The directors who vote in favour of authorising the effecting of insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the **company**.

### **Interests Register**

- 16.4 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the **company** or related **company**, are forthwith entered in the interests register.

### **Construction**

- 16.5 For the purposes of this clause 16, “director” includes a former director, and “employee” includes a former employee.

## **17. NOTICES**

### **Service**

- 17.1 A notice may be served by the company upon any director or shareholder either personally or by posting it by fast post in a prepaid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such director or shareholder.

### **Time of service by facsimile**

- 17.2 A notice served by facsimile is deemed to have been served on the day of completion of its transmission or if transmitted after 5.00pm is deemed to have been served on the day following.

### **Time of service by post**

- 17.3 A notice sent by post or delivered to a document exchange is deemed to have been served:
- a. In the case of a person whose last known address is in New Zealand, at the end of 24 hours after the envelope or package containing the same was duly posted by fast post or delivered in New Zealand; and
  - b. In the case of a person whose last known address is outside New Zealand, at the expiration of 24 hours after the envelope or package containing the same was duly posted by fast post or delivered in New Zealand.

### **Proof of service**

- 17.4 In proving service by post or delivery to a document exchange it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

### Service on joint holders

- 17.5 A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the share register in respect of the share.

### Service on representatives

- 17.6 A notice may be given by the company to the person or persons entitled to a share in consequence of the death, bankruptcy or incapacity of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

## 18. LIQUIDATION

### Distribution of surplus assets

- 18.1
- a. Subject to the terms of issue of any shares in the company and to clause 18.2 (Distribution in Specie), upon the liquidation of the company the assets, if any, remaining after payment of the debts and liabilities of the company and the costs of liquidation ("**the surplus assets**") will be distributed among the shareholders in proportion to their shareholding.
  - b. The holders of shares not fully paid up must receive only a proportionate share of their entitlement being an amount which is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder to the company in respect of the shares either under this constitution or pursuant to the terms of issue of the shares.

### Distribution in specie

- 18.2
- a. Upon a liquidation of the company, the liquidator, with the sanction of an ordinary resolution of shareholders and any other sanction required by law, may divide amongst the shareholders in kind the whole or any part of the assets of the company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be so divided and may determine how the division is to be carried out as between the shareholders or different classes of shareholders.
  - b. The liquidator may, with the same sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the shareholders as the liquidator thinks fit, but so that no shareholder will be compelled to accept any shares or other securities in relation to which there is any liability.

**19. REMOVAL FROM THE NEW ZEALAND REGISTER**

**Directors may apply for removal**

**19.1** In the event that:

- a.** The company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or
- b.** The company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation;

the board of directors may in the prescribed form request the Registrar to remove the company from the New Zealand register.

**SCHEDULE 1****PROCEEDINGS AT MEETINGS OF SHAREHOLDERS****1. CHAIRPERSON****Chairperson to be Chairperson of the Board**

- 1.1 If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of shareholders, he or she must chair the meeting.

**Election of Chairperson**

- 1.2 If no chairperson of the board has been elected, or if at any meeting of shareholders the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting, the directors present may elect one of their number to be chairperson of the meeting. If at any meeting no director is willing to act as chairperson, or if no director is present within 15 minutes of the time appointed for holding the meeting, the shareholders present must choose one of their number to be chairperson of the meeting.

**2. NOTICE OF MEETINGS****Notice in writing**

- 2.1 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not less than 10 working days before the meeting.

**Contents of notice**

- 2.2 The notice must state:
- a. The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - b. The text of any special resolution to be submitted to the meeting.

**Irregularities in notice**

- 2.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.

**Adjournment**

- 2.4 The chairperson may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

Except as so provided, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

### **Accidental omission to give notice**

- 2.5 The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at that meeting.

## **3. METHODS OF HOLDING MEETINGS**

- 3.1 A meeting of shareholders may be held either:

- a. By a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- b. By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

## **4. QUORUM**

### **Necessity for quorum**

- 4.1 Subject to clause 4.3 of this Schedule, no business may be transacted at a meeting of shareholders if a quorum is not present.

### **Numbers for quorum**

- 4.2 A quorum for a meeting of shareholders is present if 10% of the persons having the right to vote at the meeting and who between them are entitled to exercise not less than 20% of the votes to be cast on the business of the meeting are present in person or by proxy.

### **No quorum**

- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a. In the case of a meeting called under section 121(b) of this Act, the meeting is dissolved;
  - b. In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and, subject to this constitution, if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

## **5. VOTING**

### **Voting method**

5.1 In the case of a meeting of shareholders held under clause 3.1 of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- a. Voting by voice; or
- b. Voting by show of hands.

### **Voting method - audio, audio/visual**

5.2 In the case of a meeting of shareholders held under clause 3.1b of this Schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

### **Evidence that resolution carried**

5.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 5.4 of this Schedule.

### **Who may demand poll**

5.4 At a meeting of shareholders a poll may be demanded by:

- a. Not less than 5 shareholders having the right to vote at the meeting; or
- b. A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote at the meeting; or
- c. A shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all shares that confer that right.

### **When poll may be demanded**

5.5 A poll may be demanded either before or after the vote is taken on a resolution.

### **Counting of votes**

5.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

### **Equality of votes**

5.7 In the case of an equality of votes, whether voting is by voice or show of hands or poll, the chairperson of the meeting is entitled to a second or casting vote.

**Proxy holder may demand poll**

- 5.8 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of a company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

**Voting entitlement**

- 5.9 Subject to any rights or restrictions for the time being attached to any class of shares, every shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.

**Chairperson may demand poll**

- 5.10 The chairperson may demand a poll on a resolution, either before or after a vote on such resolution by voice or on show of hands.

**Withdrawal of demand**

- 5.11 The demand for a poll may be withdrawn.

**Poll to be taken as chairperson directs**

- 5.12 Except as provided in clause 5.13 of this Schedule, if a poll is duly demanded it must be taken in such manner as the chairperson directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.

**Poll on election of chairperson**

- 5.13 A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question may be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

**6. PROXIES****Right to vote by proxy**

- 6.1 A shareholder may exercise the right to vote either by being present in person or by proxy.

**Right of proxy to attend**

- 6.2 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

**Appointment of proxy**

- 6.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

**Proxy form to be sent with Notice of Meeting**

6.4 A proxy form must be sent with each notice calling a meeting of the company.

**Proxy form**

6.5 An instrument appointing a proxy must be in the following form or a form as near thereto as circumstances admit:

**THE NEW ZEALAND WINE COMPANY LIMITED**  
**INSTRUMENT APPOINTING A PROXY**

I/We \_\_\_\_\_  
of \_\_\_\_\_  
being a member of **THE NEW ZEALAND WINE COMPANY LIMITED**  
hereby appoint \_\_\_\_\_ [print name of proxy]  
of \_\_\_\_\_  
or failing him/her \_\_\_\_\_ of \_\_\_\_\_  
as my/our proxy to vote for me/us on my/our behalf at the \_\_\_\_\_ the Annual/Special  
Meeting of the  
company to be held at \_\_\_\_\_  
on \_\_\_\_\_ commencing at \_\_\_\_\_ **am/pm**  
and at any adjournment of any such meeting.

I/We direct my/our proxy to vote in the following manner

<b>Resolutions</b>	<b>Vote with a tick</b>	
	<b>For</b>	<b>Against</b>
1. _____	—	
2. _____	—	
	—	
	—	

Signed on \_\_\_\_\_ **20** \_\_\_\_\_  
[Usual signature/s]"

6.6 Deleted.

**Validity of Vote**

6.7 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any share in respect of which the proxy is given, if no notice in writing of such death, insanity, revocation or transfer has been received by the company before the start of the meeting or adjourned meeting at which the proxy is used.



## **Deposit of Proxy**

- 6.8 The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notorially certified copy of that power or authority must be deposited at the registered office of the company or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. If it is not, the instrument of proxy is invalid.

## **7. POSTAL VOTES**

- 7.1 A shareholder may not exercise the right to vote at a meeting by casting a postal vote.

## **8. MINUTES**

### **Minutes must be kept**

- 8.1 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.

### **Evidence**

- 8.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **9. SHAREHOLDER PROPOSALS**

### **Notice of matter for discussion or resolution**

- 9.1 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.

### **Notice of shareholder proposal at company's expense**

- 9.2 If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

### **Notice of shareholder proposal at shareholder's expense**

- 9.3 If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

### **Notice of late shareholder proposal to be given if practicable**

- 9.4 If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

#### **Proposing shareholder's written statement**

- 9.5 If the directors intend that shareholders may vote on the proposal by proxy, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

#### **Limits on obligation to include statement**

- 9.6 The board is not required to include in or with the notice given by the board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.

#### **Payment by shareholder of costs**

- 9.7 Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the company or tender to the company a sum sufficient to meet those costs.

### **10. CORPORATIONS MAY ACT BY REPRESENTATIVES**

- 10.1 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

### **11. VOTES OF JOINT HOLDERS**

- 11.1 Where 2 or more persons are registered as the holder of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

### **12. LOSS OF VOTING RIGHTS IF CALLS UNPAID**

- 12.1 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholder's meeting other than a meeting of an interest group.

### **13. OTHER PROCEEDINGS**

- 13.1 Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure.

**SCHEDULE 2****PROCEEDINGS OF THE BOARD****1. CHAIRPERSON****Election of chairperson**

- 1.1 The directors may elect one of their number as chairperson of the board.

**Terms of office**

- 1.2 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.

**Election of chairperson for particular meetings**

- 1.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

**2. NOTICE OF MEETING****Convening meetings**

- 2.1 A director or, if requested by a director to do so, an employee of the company may convene a meeting of the board by giving notice in accordance with this clause.

**Period of notice**

- 2.2 Not less than 2 days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

**Irregularity in notice**

- 2.3 An irregularity in the notice of the meeting is waived if all directors attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

**Means of giving notice**

- 2.4 Notice of a meeting may be given by any means, including by telephone, facsimile or electronic means. Notice given by fast post or courier addressed to a director at his or her last known residential address or by facsimile or electronic means after 5.00pm will be deemed to have been given on the day following the day the letter is posted or sent by courier or facsimile or electronic means.

### 3. METHOD OF HOLDING MEETINGS

3.1 A meeting of the board may be held either:

- a. by a number of directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
- b. by means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

### 4. QUORUM

#### Number constituting quorum

4.1 A quorum for a meeting of the board is a majority of the directors.

#### No business without quorum

4.2 No business may be transacted at a meeting of directors if a quorum is not present.

#### Alternate director may be included

4.3 In accordance with clause 13 of this constitution an alternate director present at a meeting may be included for the purpose of establishing a quorum.

#### Meeting adjourned if no quorum

4.4 If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present are a quorum.

### 5. VOTING

#### Number of votes

5.1 Every director has one vote.

#### Chairperson has casting vote

5.2 The chairperson has a casting vote, except where only two directors are present at the meeting.

#### Majority

5.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.

#### Presumption as to voting

5.4 A director present at a meeting of the board is presumed to have agreed to, and to have voted in favour of a resolution of the board, unless he or she expressly dissents from, or votes against the resolution at the meeting.

**Interested director may not vote**

- 5.5 A director who is interested in a transaction entered into, or to be entered into, by the company shall not:
- a. vote on a matter relating to that transaction; or
  - b. be included among the directors present at a meeting of directors, for the purpose of a quorum, in considering a matter relating to that transaction,

except that a director may vote in respect of and be counted in the quorum for the purposes of a matter relating to that transaction in which that director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, directors are required to sign a certificate or one which relates to the grant of an indemnity under section 162 of the Act.

**Alternate director may vote**

- 5.6 An alternate director may attend and vote at meetings of the board in accordance with and subject to clause 13 of this constitution if the director that has appointed the alternate director is absent from the meeting.

**6. MINUTES**

- 6.1 The board must ensure minutes are kept of all proceedings at meetings of the board.

**7. RESOLUTIONS****Written resolution**

- 7.1 A resolution in writing, signed or assented to by all of the directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

**Forms of resolution**

- 7.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.

**Resolution to be kept in minute book**

- 7.3 A copy of any such resolution must be entered in the minute book of board proceedings.

**8. NO NOTICE TO DIRECTORS OUTSIDE NEW ZEALAND**

- 8.1 It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand and the director has appointed an alternate director under the provisions of this constitution,

notice must (subject to clause 13 of this constitution) be given to the alternate director.

**9. OTHER PROCEEDINGS**

9.1 Except as provided in this Schedule the board may regulate its own procedure.