

Constitution of The ABAC Scheme Limited

(ACN 139 761 130)

A company limited by
guarantee

Amended 23 February 2023

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1 Objects

The objects for which the Company is established are:

- (a) to encourage a responsible approach to the marketing, naming and packaging, of alcohol and alcohol styled products;
- (b) and for that purpose to adopt all such measures and to do all such acts matters and things as may to the Company seem necessary or desirable, whether specified in this clause 1 or not;
- (c) to formulate, implement, operate and administer a code or codes dealing with matters consistent with clause 1(a) and to review such a code or codes from time to time;
- (d) to formulate, implement, operate and administer a system for receiving and considering complaints about matters consistent with clause (1)(a), including the management and administration of any panel or other body to adjudicate upon such complaints, and to review that system from time to time;
- (e) to formulate, implement, operate and administer a system to assess proposed marketing, naming and packaging against any code developed by the Company, and to review that system from time to time;
- (f) to educate and inform participants in the alcohol and alcohol styled products industry, including producers, distributors and retailers, on any codes or systems developed by the Company;
- (g) to encourage participants in the alcohol and alcohol styled products industry, including producers, distributors and retailers to comply with any code developed by the Company and to participate in, and give effect to the opinions, decisions and recommendations of, any panel, system or other mechanism developed by the Company;
- (h) to otherwise promote the responsible marketing, naming and packaging of alcohol and alcohol styled products; and
- (i) to do all such other lawful things as are incidental or conducive to the attainment of those objects or any of them.

2 Income

2.1 Application of income for objects only

The income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.

2.2 No dividends, bonus or profit to be paid to Members

No part of the profits or other income or the property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise, to the Members.

2.3 Payments in good faith

Nothing in this Constitution prevents the payment in good faith to an officer or Member, or to a firm of which an officer or Member is a partner, of:

- (a) remuneration for:
 - (i) services rendered to the Company; or
 - (ii) goods supplied to the Company in the ordinary course of business;
- (b) interest at a rate not exceeding the rate for the time being fixed for the purposes of this clause by the Company on money borrowed by the Company from an officer or Member; or
- (c) reasonable rent for premises demised or let to the Company by an officer or Member.

3 Membership

3.1 Members

A Member of the Company must be an incorporated industry association which represents producers, distributors or retailers of alcohol or alcohol styled products.

3.2 Application requirements

An application for Membership must:

- (a) be submitted to the Secretary, properly completed, in the form from time to time determined by the Directors; and
- (b) state that:
 - (i) the applicant is an industry association which represents producers, distributors or retailers of alcohol or alcohol styled products;
 - (ii) if admitted to Membership, the applicant will be bound by this Constitution and any other rules, by-laws, codes, policies or other standards prescribed or made under this Constitution from time to time; and
 - (iii) if admitted to Membership, the applicant will take all reasonable steps to procure that its members become Code Signatories, including doing all things necessary or appropriate to modify or repeal its constitution (or equivalent constituent documents), or amend any existing provisions of its constitution (or equivalent constituent documents) to cause or result in its members becoming Code Signatories; and
- (c) be accompanied by payment of the annual membership fees and any other fees for the current financial year or any part of that amount as the Directors may determine.

3.3 Admission to Membership

Applications for Membership of the Company are to be considered by the Directors within a reasonable time after being received by the Secretary.

An applicant is admitted to Membership if:

- (a) the applicant is an industry association which represents producers, distributors or retailers of alcohol or alcohol styled products;
- (b) the applicant agrees to be bound by this Constitution and any other rules, by-laws, codes, policies or other standards prescribed or made under the Constitution from time to time;
- (c) the application is approved by either:
 - (i) all of the votes cast on the resolution to admit the applicant to Membership at the Directors' meeting at which the application is considered; or
 - (ii) a circulating resolution of Members under clause 6.23; and
- (d) the applicant has paid the amount required by clause 3.2(c).

3.4 Resignation

A Member may at any time, by giving 3 months' notice in writing to the Secretary, resign their Membership of the Company.

A resigning Member must pay to the Company at the time of their resignation all amounts owed by that Member to the Company.

3.5 Termination of membership

The Membership of a Member may be terminated at a general meeting if:

- (a) the Member is no longer an industry association which represents producers, distributors or retailers of alcohol or alcohol styled beverages or Members have reasonably formed the opinion that the conduct of the Member renders it undesirable that the Member continue to be a Member of the Company;
- (b) at least 30 days' notice in writing of the general meeting has been given to that Member and all other Members;
- (c) the notice sets out the resolution to terminate the Member's Membership; and
- (d) the resolution is carried by a majority of at least two-thirds of the votes cast on the resolution to terminate the Member's Membership at the general meeting by those Members present and entitled to vote on it.

3.6 Cessation of membership

A Member's Membership of the Company ceases:

- (a) on resignation;
- (b) if the Member is a body corporate, it is or becomes Insolvent or is wound up or otherwise dissolved or deregistered; or
- (c) on its termination according to clause 3.5.

A person who ceases to be a Member must pay the Company on the date their Membership ends, all amounts owing or payable by that person to the Company, and this obligation survives the end of their Membership.

3.7 Limited liability

The Members have no liability as Members except as set out in clause 17.3.

4 Membership Fees and Other Fees

4.1 Fees to be paid by Members

Each Member is to pay such annual membership fees and any other fees in respect of each financial year of the Company as determined by the Directors. Subject to clause 4.2, such annual membership fees and other fees are payable in the manner and at the times determined by the Directors and notified to Members from time to time.

If the Directors do not determine an annual membership fee or other fees, each Member is to pay such fees as determined and advised by the Chair so that, over the course of the financial year in which Directors have not determined such fees, each Member pays an equal amount which cumulatively covers the costs incurred by the Company in that year after deducting any revenue earned by the Company in that same year. Such fees are payable 30 days after receipt of the notice from the Chair advising of the fee.

4.2 Board may grant concessions

The Directors may in their absolute discretion:

- (a) defer the obligations of a Member to pay membership fees;
- (b) reduce the membership fee payable by a Member; or
- (c) waive the payment of a Member's membership fee,

subject to conditions as they decide.

4.3 Former Members remain liable

Any former Member remains liable to the Company for all fees, levies, interest and other money due by the Member to the Company whilst they were still a Member.

In the event of any fees, levies or other money being paid in advance, no amount is refundable to any former Member unless first approved by the Directors.

5 General meetings

5.1 Annual general meeting

Annual general meetings of the Company are to be held according to the Corporations Act and may be held at one or more physical venues, at one or more physical venues and as a Virtual Meeting or as a Virtual Meeting only.

5.2 Power to convene a general meeting

Any Director may convene a general meeting whenever they think fit. However, they must convene and arrange to hold a general meeting when requisitioned by a Member according to the Corporations Act.

5.3 Period of notice of general meeting

Subject to the provisions of the Corporations Act as to short notice, not less than 21 days' notice of a general meeting must be given to each Member. In calculating the period of notice, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

5.4 Notice of general meeting

A notice of a general meeting must be in writing and:

- (a) set out the place, date and time of meeting, and state the general nature of the business to be dealt with at the general meeting and, if the general meeting is to be held in 2 or more places, and/or as a Virtual Meeting, the technology that will be used to facilitate the holding of the general meeting in that manner; and
- (b) state that:
 - (i) a Member who is entitled to attend and cast a vote at the general meeting has a right to appoint a proxy; and
 - (ii) a proxy need not be a Member.

5.5 Non-receipt of notice of general meeting

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

5.6 Cancellation or postponement of general meeting

Where a general meeting (including an annual general meeting) is convened by the Directors, they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine.

However, this clause does not apply to a general meeting convened in accordance with the Corporations Act by Members or by the Directors at the request of Members.

5.7 Written notice of cancellation or postponement of general meeting

Written notice of the cancellation or postponement of a general meeting must be given to each Member individually and to each other person entitled to receive notices of general meetings under the Corporations Act or this Constitution.

The notice must be given at least 3 days before the date for which the meeting is convened and must specify the reason for the cancellation or postponement.

5.8 Contents of notice postponing general meeting

A notice postponing a general meeting must specify:

- (a) the postponed date and time for the holding of the general meeting;
- (b) a place or the electronic means for the holding of the general meeting, which may be either the same as or different to that specified in the notice convening the general meeting; and
- (c) if the general meeting is to be held in 2 or more places, or as a Virtual Meeting, the technology that will be used to facilitate the holding of the general meeting in that manner.

5.9 Number of clear days for postponement of a general meeting

The number of clear days from the giving of a notice postponing a general meeting to the date specified in that notice for the holding of the postponed general meeting, must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act (whichever is the greater).

5.10 Business at postponed general meeting

The only business that may be transacted at a general meeting which is postponed is the business specified in the original notice convening the general meeting.

5.11 Proxy or Representative at postponed general meeting

Where:

- (a) by the terms of an instrument appointing a proxy or Representative, a proxy or Representative is authorised to attend and vote at a general meeting to be held on a specified date; and
- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

5.12 Non-receipt of notice cancelling or postponing of a general meeting

The accidental omission to give notice of the cancellation or postponement of a general meeting to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed general meeting.

6 Proceedings at general meetings

6.1 Number for a quorum

Members present in person or by proxy or Representative and representing at least 51% of the votes which may be cast on a poll at a general meeting are a quorum at a general meeting.

6.2 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it.

If a quorum is present at the beginning of a general meeting it is taken to be present throughout the meeting unless the chair of the general meeting (on the chair's own motion or at the instance of a Member, proxy or Representative who is present) declares otherwise.

6.3 Quorum and time

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the general meeting:

- (a) if convened by, or at the request of, Members is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to the other day, time and place as the chair appoints by notice to the Members and others entitled to notice of the general meeting.

6.4 Adjourned meeting

If a quorum is not present at an adjourned meeting within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

6.5 Appointment of chair of general meeting

If the Directors have elected one of their number as chair of their meetings, that person is entitled to preside as chair at a general meeting of the Company.

6.6 Absence of chair at general meeting

If a general meeting is held and:

- (a) a chair has not been elected by the Directors; or
- (b) the elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chair of the meeting (in order of precedence):

- (c) a Director chosen by a majority of the Directors present;
- (d) a Member chosen by a majority of the Members present in person or by proxy or Representative.

6.7 Conduct of general meetings

The chair of a general meeting:

- (a) has charge of the general conduct of the general meeting and of the procedures to be adopted at the general meeting;
- (b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting;
- (c) may admit observers to, and may exclude or remove observers from, any general meeting;
- (d) must admit to a general meeting those persons (if any) nominated by the Directors under clause 6.22, and may remove them; and
- (e) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the general meeting,

and a decision by the chair under this clause is final.

6.8 Motions

Any person properly present at a general meeting may move or second any motion at that general meeting but, unless that person is a Member or the proxy or Representative of a Member, may not vote on it.

6.9 Equality of votes - no casting vote for chair

If there is an equality of votes, whether on a show of hands or on a poll, the chair of the general meeting does not have a casting vote in addition to any other votes he is entitled as a Member or as a proxy or Representative of a Member.

6.10 Voting on a resolution

Every resolution submitted to a general meeting must be decided on a show of hands unless a poll is properly demanded and not withdrawn:

- (a) before the vote is taken;
- (b) before the voting results on the show of hands are declared; or
- (c) immediately after the voting results on the show of hands are declared,

by:

- (d) the chair of the meeting; or
- (e) any Member present in person or by proxy or Representative and entitled to vote on the resolution.

6.11 Declaration of results

A declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.

Neither the chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

6.12 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

6.13 Poll

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chair and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chair or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

A demand for a poll does not prevent the continuance of the general meeting for the transaction of any business other than the question on which the poll has been demanded.

6.14 Entitlement to vote

Subject to any right or restrictions for the time being under this Constitution:

- (a) on a show of hands, each Member present in person or by proxy or Representative has one vote; and
- (b) on a poll, each Member present in person has one vote and each person present as the proxy or Representative of a Member has one vote for each Member whom they represent.

6.15 Objection to voting qualification

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

- (a) may not be raised except at that general meeting or adjourned general meeting; and

- (b) must be referred to the chair of the general meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

6.16 Chair to determine any dispute

If there is a dispute as to the admission or rejection of a vote, the chair of the general meeting must decide it and the chair's decision made in good faith is final and conclusive.

6.17 Effect of unpaid subscription

In addition to any other rights of the Company, for as long as an annual membership fee or any other fees are due and payable by a Member and are more than 30 days in arrears, that Member has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy or Representative, at a general meeting of the Company.

6.18 Adjournment

The chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

- (a) in exercising this discretion, the chair may, but need not, seek the approval of the Members present in person or by proxy or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chair, a vote may not be taken or demanded by the Members present in person or by proxy or Representative in respect of any adjournment.

6.19 Notice of adjourned general meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting, unless the meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

6.20 When resolution passed

A resolution passed at a general meeting resumed after an adjournment is passed on the day it was passed.

6.21 Minutes

The Directors must cause minutes of general meetings to be made and kept according to the Corporations Act.

6.22 Invitations for special purposes

The Directors may invite persons who are not Members or the proxies or Representatives of Members to attend and speak at any general meeting if, in

the opinion of the Directors, it would be in the interests of the Company that they do so.

6.23 Circulating resolutions of Members

Unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if all of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy. The document and/or signature may be in physical and/or electronic form. The resolution is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed unanimously at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

7 Directors

7.1 Number of Directors

The number of Directors may not be less than three, or such other number as required by the Corporations Act to be the minimum number of Directors, if that number is more than three.

The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

7.2 Composition

Subject to clauses 7.1 and 7.4, each Member is entitled to appoint one Director, to remove any Director appointed by it and to replace a Director appointed by it who dies, resigns or is removed from or otherwise vacates office.

7.3 Director appointment restrictions

A Director must:

- (a) be the Executive Director or Chief Executive Officer or the person in an equivalent position, as applicable, of a Member or the nominee of that person; and
- (b) not be a current director, officer or employee of a producer, distributor or retailer of alcohol or alcohol styled products.

7.4 Appointment and removal

An appointment or removal of a Director must be by written notice to the Company. The notice takes effect immediately it is received by the Company or at any later time specified in it. A Director automatically ceases to be a Director of the Company when the Member who appointed them ceases to be a Member of the Company unless a Director ceasing to be a Director would result in the number of Directors being less than three, in which case the Director may continue in office until the date an additional Director is appointed in accordance with the requirements set out in clauses 7.2, 7.3 and 7.4.

7.5 Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; or
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

7.6 Director's interests

Subject to clause 7.3, clause 7.5 and complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:

- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
- (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

7.7 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant only in the circumstances described in clauses 7.2 and 7.4.

8 Powers and duties of Directors

8.1 Directors to manage Company

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting or the Management Committee.

8.2 Specific powers of Directors

Without limiting the generality of clause 8.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or give any security for a debt, liability or obligation of the Company or of any other person.

8.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

8.4 Provisions in power of attorney

A power of attorney granted under clause 8.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

8.5 Signing of cheques

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

8.6 Delegation of Directors' powers

Subject to clause 11, the Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

9 Proceedings of Directors

9.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

9.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

9.3 Questions decided by majority

Subject to clause 3.3, a question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

9.4 Alternate Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

9.5 Chair of Directors

The Directors may elect one of their number as chair of their meetings and may also determine the period for which the person elected as chair is to hold office.

9.6 Absence of chair at Directors' meeting

If a Directors' meeting is held and:

- (a) a chair has not been elected under clause 9.5; or
- (b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chair of the meeting.

9.7 Chair's vote at Directors' meetings

The chair of a Directors' meeting does not have a casting vote.

9.8 Appointment of Alternate Director

Subject to the Corporations Act, a Director may appoint a person to be an Alternate Director in that Director's place during such period as that Director thinks fit, subject to the Member who appointed that Director confirming in writing to the Company that it approves the appointment of the Alternate Director.

9.9 Alternate Director and meetings

An Alternate Director is entitled to notice of Directors' meetings while he or she is acting as a Director and, if the appointor is not present at a meeting, the Alternate Director is entitled to attend, be counted in the quorum and vote in the appointor's place.

9.10 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

9.11 Alternate Director responsible for own acts and defaults

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

9.12 Payments to Alternate Director

An Alternate Director is not entitled to receive from the Company any payment other than the payments permitted to be paid to Directors under clause 7.5.

9.13 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired and terminates in any event if the appointor ceases to be a Director for any reason.

9.14 Appointment or termination in writing

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

9.15 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

9.16 Director attending and voting by proxy

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

9.17 Quorum for Directors' meeting

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is:

- (a) where the meeting is to consider an application for Membership, all Directors who are entitled to vote on a resolution to approve such application; or
- (b) in all other cases, two Directors, unless otherwise determined by the Directors.

9.18 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 7.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

9.19 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. The document and/or signature may be in physical and/or electronic form. The resolution is passed when the last Director signs.

9.20 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee (including the Management Committee), or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

10 Committees

10.1 Formation

Subject to clause 11, the Directors may delegate any of their powers, other than powers required by law to be dealt with by the Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

10.2 Powers delegated to Committees

Subject to clause 11, a Committee to which any powers have been delegated under clause 10.1 must exercise those powers in accordance with any directions of the Directors.

10.3 Chair of Committee

Subject to clause 11, the members of a Committee may elect one of their number as chair of their meetings. If a meeting of a Committee is held and:

- (a) a chair has not been elected; or
- (b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members present may elect one of their number to be chair of the meeting.

10.4 Meetings of Committee

Subject to clause 11, a Committee may meet and adjourn as it thinks proper.

10.5 Determination of questions

Subject to clause 11, questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting. The chair of the meeting has a deliberative, but not a casting, vote.

11 Management Committee

11.1 Establishment

There is to be a Committee called the **Management Committee** which is taken to have been established at the Relevant Time.

The Directors may not dissolve the Management Committee without the consent of all the Members.

11.2 Functions of the Management Committee

The Management Committee is to:

- (a) determine, manage, administer and operate the ABAC Code within The ABAC Scheme, including reviewing the operation of the code and making any changes which may seem necessary or desirable and developing education and guidance materials on the operation and application of the code;

- (b) determine, manage and administer a complaints procedure for examining complaints concerning marketing, naming or packaging for alcohol or alcohol styled products, which is to include the establishment of The ABAC Adjudication Panel as constituted according to, and having the powers and functions described in, schedule 1;
- (c) determine, manage and administer the ABAC Pre-Vetting Service, which is to include the appointment of appropriately qualified persons to advise Eligible Code Signatories and/or marketers of alcohol or alcohol styled products who request advice on the compliance of any of their proposed marketing, name or packaging with the requirements of the ABAC Code and such other functions and features as described in schedule 2;
- (d) to encourage Eligible Code Signatories to become Code Signatories and to determine, manage and implement systems regulating their participation as Code Signatories, which are to include opportunities for Code Signatories to meet or consult with Management Committee members in relation to the codes, procedures, schemes and systems managed by the Management Committee and which, for avoidance of doubt, can distinguish between Code Signatories;
- (e) do all such other things as, to the Management Committee, may seem necessary or expedient for the proper exercise of its powers and performance of the functions set out in this clause;
- (f) exercise all the other powers and functions conferred on it by:
 - (i) this clause 11;
 - (ii) any other provision of this Constitution; or
 - (iii) the Company in general meeting.

11.3 Composition of the Management Committee

Subject to clause 11.1, the Management Committee is to be composed of the following people:

- (a) the Executive Director or Chief Executive Officer or the person in an equivalent position, as applicable, of each Member, or their nominee;
- (b) the Chief Executive Officer of Advertising Council Australia Ltd or their nominee; and
- (c) the Assistant Secretary responsible for alcohol issues at the Commonwealth Department responsible for health policy or their nominee.

11.4 Management Committee appointment restrictions

A member of the Management Committee must not be a current director, officer or employee of a producer, distributor or retailer of alcohol or alcohol styled products.

11.5 Attenuation of Government representative's role

For the avoidance of doubt, the person from time to time on the Management Committee under clause 11.3(c) may absent themselves from any part of a meeting, or from any meeting, of the Management Committee when they consider it appropriate to do so, having regard to the nature of the business to be considered or the interests of the Commonwealth of Australia or relevant State Government.

11.6 Meetings

The Management Committee:

- (a) must hold a meeting at least four times in any calendar year; and
- (b) subject to clause 11.6(a), may meet for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.

11.7 Convening a meeting

Any of the members of the Management Committee referred to in clause 11.3(a) may at any time convene a meeting of the Management Committee. Unless all the members of the Management Committee agree, at least 14 days notice of a meeting of the Management Committee must be given to each member. In calculating the period of notice, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

11.8 Chair of the Management Committee

The Directors may appoint an independent chair to the Management Committee and determine the term of that appointment. If an independent chair is appointed the role of deputy chair of the Management Committee is to be filled by one of the Management Committee members referred to in clause 11.3(a). The deputy chair will serve for one year before the role rotates to another Management Committee member referred to in clause 11.3(a), it being the intention that the role of deputy chair be rotated equally between each of those Management Committee members. Notwithstanding this provision, if there is unanimous agreement by the Management Committee, the term of the deputy chair may be extended for up to three months. If an independent chair is not appointed, the deputy chair will be the chair of the Management Committee. The deputy chair, or chair if there is no independent chair, is to arrange for the provision of secretarial services to the Management Committee.

11.9 Absence of chair at meeting

If a Management Committee meeting is held and the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the Management Committee members present must elect one of their number who is eligible by clause 8 to be chair as chair of the meeting.

11.10 Chair's vote at meetings

An independent chair of the Management Committee is a non-voting member of the Management Committee. A chair or deputy chair that is a voting

member of the Management Committee has a deliberative, but not a casting, vote.

11.11 Quorum for meeting

At a meeting of the Management Committee, the number of members whose presence is necessary to constitute a quorum is three-fifths of the Management Committee members, provided that number consists of a majority of the Management Committee members referred to in clause 11.3(a).

11.12 Continuing members may act

The continuing Management Committee members may act despite a vacancy in their number.

11.13 Circulating resolutions

The Management Committee members may pass a resolution without a meeting being held if all of them entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by the Management Committee members if the wording of the resolution and statement is identical in each copy. The document and/or signature may be in physical and/or electronic form. The resolution is passed when the last Management Committee member signs.

11.14 Validity of acts

All acts done at a meeting of the Management Committee, or by a person acting as a Management Committee member are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Management Committee member or of the person so acting; or
- (b) a person acting as a Management Committee member was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

11.15 Annual Report

The Management Committee should annually prepare a written report and provide a copy of the report to the Directors, the relevant Federal Minister for alcohol policy and strategy and Ad Standards.

12 Secretary

12.1 Appointment and removal

The Directors may appoint a Secretary for the period and on the terms it thinks fit and (subject to the terms of any contract between the Secretary and the Company) may remove and replace the Secretary.

12.2 Secretary

The Secretary is to act as the secretary of the Company for the purposes of the Corporations Act.

12.3 Right to attend meetings

The Secretary has:

- (a) the right to notice of all general meetings, Board meetings and Management Committee meetings;
- (b) the right to attend and speak at those meetings; but
- (c) no right to a vote at those meetings.

13 Seal

13.1 Safe custody of common seals

The Board must provide for the safe custody of any seal of the Company.

13.2 Use of common seal

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Board; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

14 Inspection of records

14.1 Inspection by members

Subject to the Corporations Act, the Board may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

14.2 Right of a member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Company in the general meeting.

15 Service of documents

15.1 Document includes notice

In this clause 15, a reference to a document includes a notice.

15.2 Methods of service

The Company may give a document to a Member:

- (a) personally;

- (b) by sending it by post to the address for the Member in the register of members or an alternative address nominated by the Member; or
- (c) by sending it to the email address nominated by the Member or the Member's nominated Representative.

15.3 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post, and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the sixth day after the date of its posting.

15.4 Electronic transmission

If a document is sent by email, delivery of the document is taken:

- (a) to be effected by properly addressing and sending the email, and
- (b) to have been delivered on the day following its transmission.

16 Audit and accounts

16.1 Company to keep accounts

The Directors must cause the Company to keep true accounts of its business in accordance with the requirements of the Corporations Act.

16.2 Company to audit accounts

The Board must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act.

16.3 Annual report of the Company

The annual report, including the audited financial statements, must be prepared and circulated to Members as required by the Corporations Act.

17 Winding up

17.1 Application of Corporations Act

The provisions of the Corporations Act in relation to a voluntary winding up will apply to the Company.

17.2 Distribution of property

If on the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatever, that property may not be paid to or distributed among Members, but must be given or transferred to another institution or institutions:

- (a) having objects similar to the objects of the Company; and

- (b) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution,

that institution or institutions to be determined by the Members at or before the time of dissolution or, failing such a determination, by a judge who has or acquires jurisdiction in the matter.

17.3 Contribution of members on a winding up

Each Member undertakes to contribute to the Company's property if the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member, for payment of the Company's debts and liabilities contracted before the Member ceased to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, that amount as may be required not exceeding \$100.

18 Indemnity

18.1 Indemnity

To the maximum extent permitted by law, the Company will indemnify any current or former Director or Secretary of the Company or any Management Committee member or their proxy or any appointed agent of the Company including Adjudicators or Pre-vetters out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

18.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or a Secretary against liability incurred by the person in that capacity, including a liability for legal costs, unless

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

18.3 Contract

The Company may enter into an agreement with a person referred to in clauses 18.1 and 18.2 with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

19 Definitions and interpretation

19.1 Definitions

The following words have these meanings in this Constitution unless the contrary intention appears.

Ad Standards means the organisation by that name which provides a free public service of complaint resolution, concerning determinations on complaints about most forms of advertising in relation to issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, sexuality and nudity, and health and safety.

ABAC Pre-Vetting Service means the alcohol and alcohol styled product marketing pre-vetting service established according to clause 11.2(c) and **schedule 2**.

The ABAC Adjudication Panel, means the Panel by that name constituted under clause 11.2(b).

The ABAC Code, means the code by that same name of The ABAC Scheme at the Relevant Time, as amended from time to time by the Management Committee.

Advertising Council Australia Ltd means the organisation by that name representing the interests of companies providing advertising and marketing communication services.

Alternate Director means a person appointed as an alternative director under clause 9.8.

Chief Adjudicator means person appointed from time to time as Chief Adjudicator of The ABAC Adjudication Panel.

Code Signatories means Eligible Code Signatories which have agreed to be bound by any code or codes developed by the Management Committee and to comply with, and give effect to, any decisions, opinions and recommendations of any panel, scheme or other mechanism developed by the Management Committee that are either:

- (a) A member of a Member; or

- (b) Approved by the Management Committee and have agreed to pay an annual administration fee to be determined by the Directors.

Committee means a committee of the Directors constituted under this Constitution.

Company, means The ABAC Scheme Limited, a company incorporated under the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Director means a person holding office as a director of the Company and where appropriate includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Eligible Code Signatories means:

- (a) any member of a Member;
- (b) any company who uses the ABAC Pre-Vetting Service; and
- (c) any company or alcohol industry association which the Management Committee approves as Eligible Code Signatories.

Management Committee means the Committee by that name constituted under clause 11.

Member means a member of the Company, and **Membership** has a corresponding meaning.

Registered Office means the registered office for the time being of the Company.

Relevant Time means the date on which the Company is incorporated.

Representative means a person appointed by a body corporate pursuant to section 250D of the Corporations Act.

Secretary means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company, as appointed in clause 12

Virtual Meeting means a meeting conducted using virtual technology.

Virtual Meeting Technology means any technology that allows participants entitled to attend a meeting, as a whole, a reasonable opportunity to participate in the meeting without being physically present at the meeting.

The ABAC Scheme means the industry lead scheme for best practice in the marketing of alcohol and alcohol styled products that first commenced in 1 July 1998.

19.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the word **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise.

19.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” or “subsection” refers to a provision of the Corporations Act.

19.4 Body ceasing to exist

Where in this Constitution a reference is made to a named body, office or person, and that body, office or person ceases to exist, the reference is to be taken as a reference to that body, office or person whose objects or functions are, in the opinion of the Company, most closely comparable to those of that named body, office or person.

19.5 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

19.6 Headings

Headings are inserted for convenience and guidance only and do not affect the interpretation of this Constitution.

19.7 Including etc

Include, **includes** and **including** are not to be construed as words of limitation in this Constitution.

Schedule 1 - ABAC Adjudication Panel

1 Role and Procedures

1.1 Role

The ABAC Adjudication Panel is to consider and adjudicate upon the merits of complaints about the marketing, naming or packaging of alcohol or alcohol styled products.

1.2 Procedures

The Management Committee is to develop and maintain rules to guide the procedures adopted by the ABAC Adjudication Panel in undertaking its role.

2 Panelists

2.1 Number and Makeup of the Panelists

There will be maintained at least five (5) Panelists comprising of

- (a) one (1) appointed as Chief Adjudicator and
- (b) at least two (2) appointed as Health Sector Panelists and
- (c) at least two (2) other Panelists.

3 3. Appointment, Eligibility and Term of Panelists

3.1 Eligibility

A person who the Management Committee is satisfied:

- (a) is a current employee of a participant or member of the alcohol or alcohol styled product industry; or
- (b) has been an employee of a participant or member of that industry during the period of five (5) years prior to the date of their proposed appointment

is ineligible for appointment or continued appointment, to the ABAC Adjudication Panel.

The Management Committee must promptly terminate an appointment or re-appointment made under clause 3 of this schedule if the relevant appointee becomes, or is found to be, ineligible.

3.2 Health Sector Panelists

Health Sector Panelists will be appointed from a shortlist of candidates nominated through the following process. The relevant Federal Minister with responsibility for alcohol issues or his or her nominee will be invited to nominate a shortlist of candidates, with three (3) candidates to be included on the shortlist for each vacancy for a Health Sector Panelist. Health Sector Panelists will have expertise in public health or marketing and public health.

3.3 Tenure

Each Panelist holds office for a period of up to three (3) years calculated from (and including) the date of their appointment and is eligible for reappointment when the term of their appointment (or earlier reappointment) expires.

3.4 Terms and Conditions

The Management Committee is to otherwise determine the Terms and Conditions of appointment as Panelists.

4 The Chief Adjudicator

The Chief Adjudicator is responsible for the operation of the ABAC Adjudication Panel inclusive of:

- (a) chairing and facilitating the decision-making processes of the Panel,
- (b) overseeing the administrative processes of the ABAC Adjudication Panel,
- (c) liaison with the Management Committee, and
- (d) preparation of an annual written report to the Management Committee on the activities of the ABAC Adjudication Panel.

A Deputy Chief Adjudicator may be appointed by the Management Committee to act as Chief Adjudicator in circumstances where the Chief Adjudicator is unable to act.

5 Panel Adjudications

5.1 Composition of Panel

When making an adjudication, the ABAC Adjudication Panel shall consist of three (3) Panelists, one (1) of whom must be a Health Sector Panelist.

5.2 Majority Decisions

Decisions of the ABAC Adjudication Panel are to be taken by a majority of the votes of the Panelists.

5.3 Decision-Making Process

The ABAC Adjudication Panel may conduct adjudications and adjourn and otherwise regulate their decision-making process as the Panelists think fit.

5.4 Decisions in Writing

All decisions of the ABAC Adjudication Panel must be recorded in writing.

6 Exclusion of Liability

6.1 Company to seek exclusion of liability

The Company will take all reasonable actions to ensure that Panelists are not liable to a party for any act or omission (including a negligent or grossly negligent act or omission) arising out of or directly in connection with a complaint referred to the ABAC Adjudication Panel.

6.2 Action to be taken by Company

Without limiting the actions which may be taken pursuant to clause 6.1 of this Schedule, the Company will:

- (a) indemnify Panelists in accordance with clause 18.1 of this Constitution; and
- (b) secure insurance for the benefit of Panelists in accordance with clause 18.2 of this Constitution.

Schedule 2 - ABAC Pre-Vetting Service

1 Appointment

The Management Committee is to appoint at least two persons to pre-vet the marketing, naming and packaging of producers, distributors or retailers of alcohol or alcohol styled products and to arrange for the pre-vetting of the material against the ABAC Code.

2 Terms of Appointment

A person may be appointed under clause 1 of this schedule for a period of up to three years and is eligible for reappointment when the term of their appointment (or earlier reappointment) expires.

The Management Committee will determine the other terms and conditions of appointment, including remuneration and payment of related expenses, for persons appointed under clause 1 of this schedule.

3 Eligibility

A person whom the Management Committee is satisfied:

- (a) is a current employee of a participant or member of the alcohol or alcohol styled product industry; or
- (b) has been an employee of a participant or member of that industry during the period of five years prior to the date of his proposed appointment,

is ineligible for appointment under clause 1 of this schedule.

The Management Committee must promptly terminate an appointment or re-appointment made under clause 2 of this schedule if the relevant appointee becomes, or is found to be, ineligible.

4 References and scope

The Management Committee is to develop and maintain guidelines in relation to whether materials may or should be pre-vetted against the ABAC Code. For this purpose, the Management Committee may distinguish between different types of alcohol or alcohol styled products and different types of marketing, naming or packaging material.

5 Fees

The Management Committee is to have oversight of a system for the charging of fees for the provision of ABAC Pre-vetting Services, with the Directors to determine the fees and manage and administer the collection of such fees.