

**THIS IS A TRUE AND CORRECT COPY OF THE CONSTITUTION OF SPIRITS NEW ZEALAND
INCORPORATED AS ALTERED AND ADOPTED 25.08.2020**

CONSTITUTION

SPIRITS NEW ZEALAND INCORPORATED

AUGUST 2020

1. Name

The name of the Association will be "Spirits New Zealand Incorporated" (Spirits NZ).

2. Office

The office of the Association shall be at a place to be determined by the Governing Executive from time to time.

3. Primary Object

(a) To create a social and political climate which ensures the spirits industry improves its right to trade in an equitable and commercially reasonable manner;

4. Subsidiary Objects

(b) To represent the interests of members to Governments, statutory authorities, organisations, councils and associations for the benefit of the spirits industry;

(c) To provide advice to members on all matters and questions, legislation and regulations impinging on the manufacture, importation, distribution, sale and consumption of spirits and spirit-based products;

- (d) To co-operate, assist and support any other organisations, local or international, seeking to protect and advance the position of the spirits industry;
- (e) To take action on behalf of members to prevent illegal and undesirable practices in the industry by others:
- (f) To promote adherence among members to all relevant codes, industry agreements, regulations and Acts of parliament;
- (g) To establish funds for the execution of the Association's objects;
- (h) To affiliate with other related bodies or alcohol industry association, local or international, in furtherance of the objects of the Association.
- (i) To obtain an equitable burden of taxation, excise duty and levies on all kinds of spirits;
- (j) To do all such things relating to the particular objects above or otherwise which may from time to time be necessary or expedient for the promotion, benefit and protection of the spirits industry so far as the same are permitted by the laws of New Zealand to corporations organised under the Incorporated Societies Act 1908.

4. Powers

The Association shall have the power to do all such things as may be necessary or incidental to the carrying out or attainment of any of its objects.

5. Members

- (a) The members of the Association shall be any natural person or body corporate represented in New Zealand, and who is either a distiller or is a representative office agent or organisation representing the interests of a distiller or distillers or who is a distributor of spirits and who is elected to membership.

(b) The members as at August 2020 are:

Full Members

- Bacardi New Zealand Ltd Holdings
- Asahi NZ
- Beam Suntory
- Brown-Forman
- DB
- Diageo
- Hancocks
- Lion
- Moet Hennessy
- Pernod Ricard New Zealand
- William Grant & Sons

Associate Members:

- Lactinol
- EuroVintage

(c) Application for Membership

- (i) Any firm, company, association, organisation or individual holding the appropriate qualifications by the last preceding clause hereof may apply for membership. Each application for membership is to be accompanied by a statement in writing that if elected the applicant will be bound by the Constitution of the Association and will promptly pay all levies and subscriptions duly struck by the Association.
- (ii) The Governing Executive may consider any application in any manner that it sees fit and reserves the absolute power to determine the eligibility and/or fitness of every applicant for membership, and the Governing Executive may refuse any application without assigning any reason therefore.
- (iii) The Governing Executive may at its absolute discretion admit an applicant to Associate Membership and in such case such members shall not have any entitlement to have a representative on the Governing Executive or entitlement to participate in the distribution of surplus assets of the Association on a winding up.

6. Governing Executive

- (a) The Governing Executive shall consist of a Chair and Vice Chair and representatives from all other fully paid up, full fee paying members.
- (b) At any meeting of the Governing Executive, each member shall have one deliberative vote and in the case of equality of votes, for or against any proposal, the Chair shall have a casting vote.
- (c) The Governing Executive will meet as and when required by the Chair and will manage the affairs of the Association between general meetings.
- (d) The annual payment for a Governing Executive member and an associate member shall be based on an agreed sum as determined from time to time by the Governing Executive.
- (e) The term of the Chair and Vice Chair will be two years.
- (f) The Chair and Vice Chair will be selected by nomination and majority vote at the Association's annual general meeting of the relevant year.

7. Chief Executive

The Governing Executive shall have the power to appoint remove and replace from time to time such staff, including a Chief Executive for the Association, as it may determine upon such salary and/or terms of employment as it may think fit.

The Chief Executive will be responsible to the Governing Executive, through the Chair, and shall act in accordance with the instructions of the Executive or powers delegated by the Executive for the management of the Association, and for the proper maintenance of the Association's records, and will be a non-voting member of the Governing Executive.

8. Secretary/Treasurer

The Secretary/Treasurer will be responsible for the finances of the Association and shall present to each Annual Meeting of the Association or at any such other time as determined by the Association a duly audited Statement of Affairs of the Association for the preceding 12 months or for any such other period as the Association may determine.

The fiscal year of the Association will be from 1st April to 31st March.

9. Auditor

The Annual Meeting may appoint an Auditor, who may be honorary, for the ensuing 12 months.

10. Meetings

- (a) Ten (10) working days written notice will be given of all meetings, although, save for the Annual General Meeting, the Chair may convene a meeting at shorter notice when, in the opinion of the Chair, a matter of urgency exists.
- (b) The Chair will officiate at all meetings, or in the absence of the Chair, the Deputy Chair. Where the Chair and Deputy Chair are absent the meeting may elect a Chair pro-tem from its number. The ruling of the Chair on any matter of procedure shall be final.
- (c) A quorum for all meetings will be 50% and over of members present in person or by proxy or by an accredited representative.
- (d) All members shall have a single vote at General Meetings and each member of the Governing Executive shall have a vote at Executive meetings. All resolutions shall be passed by a simple majority, save for the election of new members and in the case of a dispute or expulsion. The Chair shall have a casting vote at any meeting.
- (e) The Governing Executive may co-opt such non-voting members as it sees fit. Such members hold office at the discretion of the Executive.

11. Unanimous or Majority Resolutions in Writing

- (a) A resolution in writing, signed by or assented to by all representatives then entitled to receive notice of a Governing Executive meeting, is as valid and effective as if it had been passed at a meeting of the Executive duly convened and held.
- (b) A resolution in writing, duly signed by or assented to by a majority of the representatives then entitled to receive notice of a Governing Executive Meeting is as valid and effective as if it had been passed at a meeting of the Governing Executive duly convened and held provided that all persons entitled to receive notice of that meeting were given the notice required for meetings under this Constitution.
- (c) A resolution in writing for the purposes of clauses (a) and (b) immediately above may consist of one or more documents in like form, each signed by one or more representatives of members and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by one or more representatives shall be conclusive evidence of the execution of the original document by those representatives.

12. Bank Accounts

Bank accounts shall be kept in the name of the Association and all monies received shall be paid into such accounts and all payments therefrom shall be made by cheques or other approved banking instruments, signed or approved by any two of the following:

- Chair
- Vice Chair
- Secretary/Treasurer
- Chief Executive

13. Resignation

Any member or associate member may resign from the Association by giving 90 days' notice in writing and by paying all levies, dues or subscriptions owing to that time. Any member so resigning automatically relinquishes any interest or proprietary right in the assets of the Association.

14. Cessation of Membership

A member or associate member shall cease to be a member of the Association if and when a resolution to that effect, of which one month's notice in writing shall have been given to all members including the member affected is carried at a meeting of the Governing Executive.

Without limiting the circumstances under which such a resolution could be put to the Association, such a resolution shall be put where:

- (a) The member or associate member affected is six months in arrears of any subscription or other moneys due to the Authority; or
- (b) The member or associate member concerned becomes bankrupt, passes into liquidation or otherwise ceases to exist.

15. Subscriptions

The subscriptions of members or Associate Members shall be determined from time to time by the Governing Executive of the Association and shall be payable on the 20th of the month following notification. The Governing Executive will, as much as is practicable, provide advance warning of an increase in subscriptions to allow Members and Associate Members sufficient time to budget for such increases.

Any Member or Associate Member failing to pay the subscription shall, after one month's written notice by the Governing Executive, forfeit all rights of membership.

16. Special Levy

In addition to the annual subscription, the Association may from time to time determine to make a special levy upon giving members notice in accordance with Clause 10 of the meeting at which it is proposed to consider the making of such a levy and such notice shall specify the amount of the proposed levy to be payable by each member and the method of calculation adopted in assessing the proportionate part of the levy which it is considered should be payable by each particular member.

17. Complaints and Disputes

Members of the Governing Executive can bring specific complaints or disputes about other members to a meeting of the Governing Executive for the purpose of having such a complaint or dispute resolved using the Associations' agreed dispute resolution process as appended to this Constitution.

In this context a complaint or dispute must be in relation to:

- a) A member or members acting in a manner that is thought to be counter to the Objects of the Association; or
- b) A member or members acting in a manner thought to be in breach of Codes of conduct, operation or behaviour the Governing Executive may, from time to time, develop.

18. Expulsion

The Governing Executive shall have the power by unanimous resolution to expel a member or associate member or to refuse to renew the subscription of such member on grounds which the Executive shall consider at a meeting called for such purpose.

19. Seal

The Common Seal of the Association shall be in the custody of the Secretary/Treasurer and shall not be affixed to any Deed or other document except by resolution of the Governing Executive in the presence of any two members of the Governing Executive.

20. Constitution

(a) Amendment

The Constitution may be altered, added to or rescinded at a general meeting of Association for which 30 days written notice stating the nature of the proposed amendment has been given and is passed by a two-thirds majority of members present.

(b) Matters not covered

Where any matter arises that is not covered by the Constitution the Association may deal with the matter or question as it sees fit in a general meeting.

21. Borrowing and Investment

(a) The Association may borrow or raise moneys for the furtherance of the objects of the Association either with or without security.

(b) The Association may invest all the moneys held by the Association on the Association's behalf in and upon any investment authorised by the law for the time being in force in New Zealand for the investment by the Trustees of Trust Funds.

22. Dissolution

The Association may be voluntarily wound up in accordance with Section 24 of the Incorporated Societies Act 1908.

23. Disposition of Surplus Assets

In the event of the Association being wound up the surplus assets and funds after payment of the Association's liabilities and expenses shall be disposed of by distributing them among the Governing Executive of the Association, based on subscriptions, at the date of winding up.

24. Representations on Behalf of the Association

Only the Chair and Chief Executive may speak on behalf of or represent the position of the Association unless the Chair or a meeting of the Governing Executive agrees that a member may represent or speak on behalf of the Association on an issue or position to which the Governing Executive has agreed is that of the Association.

25. Individual Member Positions

Notwithstanding clause 24 all members will publicly support agreed Association positions. If a member does not agree with an Association position this must be tabled and discussed at a meeting of the Governing Executive prior to any public comment that might be construed as being contrary to, or in dissent of, an agreed Association position.

Appendix 1

Complaints and Disputes Resolution Process

This process has been developed to support the resolution of complaints or disputes as detailed in Section 17 of the Constitution to which this process is appended.

1. Laying of a Complaint or Dispute

If a member believes another member or members are in breach of Section 17 (a) or (b) of the Constitution they must detail their complaint or dispute in writing and provide to the Chair and Chief Executive.

2. Chair and Chief Executive's Responsibilities

On receiving a written complaint or dispute the Chair and Chief Executive will –

- (a) Provide the subject or subjects of the complaint or dispute with the written detail as provided by the complainant; and
- (b) Attempt to resolve the complaint or dispute in discussion with all parties in good faith.

If, in the Chair's and Chief Executive's opinion, the complaint or dispute cannot be resolved through discussion he/she will –

- (c) Bring the complaint to the next scheduled meeting of the Governing Executive; or
- (d) Convene an extraordinary meeting of the Governing Executive to hear the complaint. Such a meeting will be convened no more than 21 days following receipt of the complaint.

3. Meeting of the Governing Executive to Hear Complaint or Dispute

At the meeting at which the complaint or dispute is heard –

- (a) The complainant will firstly be given the opportunity to outline their complaint or dispute; and
- (b) The subject or subjects of the complaint or dispute will be given the opportunity to state their position in relation to the complaint or dispute.

Following consideration and discussion of both positions the Governing Executive shall vote, by two-thirds majority, to uphold or dismiss the complaint or dispute. If upheld the Governing Executive will also rule on action or actions deemed necessary to resolve the complaint or dispute.

4 Right of Appeal

Either party to the complaint or dispute shall have the right to appeal the decision of the Governing Executive. An appeal must be lodged in writing with the Chair no more than two working days following the Governing Executive meeting held to hear the complaint or dispute.

If an appeal is sought the Chair shall appoint an independent third party (the Appeal Chair) to hear the appeal. The appeal will be convened no more than 14 days following the Governing Executive meeting held to hear the complaint or dispute.

Those present at the appeal hearing will be the –

- Appeal Chair
- Complainant
- Member or members subject to the complaint or dispute
- Association Chair
- Association Chief Executive

(a) Appeal Process

At the appeal hearing –

- i. The complainant will firstly be given the opportunity to outline their complaint or dispute; and
- ii. The subject or subjects of the complaint or dispute will be given the opportunity to state their position in relation to the complaint or dispute.

The Appeal Chair may seek whatever clarification they deem necessary on any point raised by any party to the complaint or dispute. The Appeal Chair shall present their findings and recommendations to the Association Chair no later than five working days after the hearing.

The Association Chair shall then communicate the decision to the parties to the complaint or dispute. The decision on appeal shall be considered final.

If, on appeal, the decision is made to

- i. uphold the complaint or dispute AND this was the original decision of the Governing Executive at its meeting held to hear the complaint or dispute then any actions agreed as necessary at this meeting to resolve the complaint or dispute shall stand; or
- ii. uphold the complaint or dispute AND this was not the original decision of the Governing Executive at its meeting held to hear the complaint or dispute then the Chair shall call a meeting of the Governing Executive as soon as practical to develop an agreed set of actions.

(b) Costs

The costs associated with the appeal process will be borne by the appellant to a maximum of \$10,000 plus GST.

5 Refusal to comply

If the complaint or dispute is upheld AND the subject of the complaint or dispute refuses to comply with this decision then they may be considered in breach of the Objects of the Association's Constitution and subject to expulsion under Section 18 of the Constitution.

6 Complaint or Dispute Involving Chair

If the complaint or dispute involves the Chair then the Vice Chair shall act in his/her stead with regards to the process detailed here.

7 Complaint or Dispute Involving Chair and Vice Chair

If the complaint or dispute involves both the Chair and Vice Chair then the CEO will convene an urgent meeting of unaffected members who shall select a member to act in the Chair's stead with respect to the process detailed here.