

# THE COMPANIES ACT 1985

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## COMPANY LIMITED BY SHARES

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### MEMORANDUM OF ASSOCIATION (Amended by a Written Resolution dated 24 September 2002)

OF

### SCOTTISH COURAGE LIMITED<sup>1</sup> Company Number SC65527



- 1 The name of the Company is "SCOTTISH COURAGE LIMITED"<sup>1</sup>.
- 2 The registered office of the Company will be situate in Scotland.
- 3 The objects for which the Company is established are:
  - (A) To carry on business as hotel, club, restaurant and public house proprietors and licensed victuallers either on its own account or on account of any other person, firm or company together with all or any of the trades or business of brewers, maltsters, hop merchants and growers, blenders, yeast merchants and dealers, malt factors, corn merchants, distillers, wine and spirit merchants and importers, coopers, bottlers, bottle makers and bottle stop makers, potters, canners and can makers, caterers, tobacconists, confectioners, wine growers and shippers, sport leisure and entertainment promoters and proprietors, haulage and transport contractors, general carriers, warehousemen, ice manufacturers and merchants, farmers, market gardeners, dairymen, grain sellers and dryers, timber merchants, brick makers, finings manufacturers, isinglass merchants, importers, exporters, manufacturers, distributors and agents for the sale of and dealers in wines, spirits, beers, ales, alcoholic and non-alcoholic drinks of all descriptions, mineral and aerated waters, soft and other drinks, syrups, flavourings mixtures, foodstuffs and substances of all kinds, and of and in plant, machinery, tools, bottles, syphons, cans, jars, cases, barrels and other receptacles and apparatus and appliances of every description required for use in connection with such businesses and carriers and manufacturers of and dealers in any articles or things which can or may be conveniently manufactured or dealt with in connection with any such business as aforesaid and to cultivate, grow, produce or deal in any other product whatsoever for the time being required for any of the aforesaid business.
  - (B) To transact and carry on all kinds of agency business.

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<sup>1</sup> Name changed from Scottish & Newcastle Inns Limited to Scottish & Newcastle Limited by a special resolution dated 5 June 1991. Name changed from Scottish & Newcastle Limited to Scottish & Newcastle Breweries Limited by a special resolution dated 29 August 1991. Name changed from Scottish & Newcastle Breweries Limited to Scottish Courage Limited by a special resolution dated 16 August 1995.

- (C) To carry on any other business of any nature whatsoever which may seem to the Directors to be capable of being conveniently carried on in connection or conjunction with any business of the Company hereinbefore or hereinafter authorised or to be expedient with a view to rendering profitable or more profitable any of the assets or utilising the know-how or expertise of the Company or any other company which is in relation to the Company a holding company or is a subsidiary of the Company or any such holding company.
- (D) To subscribe, underwrite, purchase or otherwise acquire, and to hold, dispose of, and deal with, any shares or other securities or investments of any nature whatsoever, and any options or rights in respect thereof, and to buy and sell foreign exchange.
- (E) To draw, make, accept, endorse, discount, negotiate, execute, and issue, and to buy, sell and deal with bills of exchange, promissory notes, and other negotiable or transferable instruments or securities.
- (F) To purchase, feu, take on lease or in exchange, hire or otherwise acquire for any estate or interest any property or assets or any concessions, licences, grants, patents, trade marks, copyrights or other exclusive or non-exclusive rights of any kind and to develop and turn to account and deal with the same in such manner as may be thought fit and to make experiments and tests and to carry on all kinds of research work.
- (G) To build, construct, equip, execute, carry out, improve, work, develop, administer, maintain, manage or control works, plants, factories, wharves, jetties, roads, warehouses, depots, offices and other buildings, structures or facilities of all kinds, whether for the purposes of the Company or for sale, letting or hire to or in return for any consideration from any company, firm or person, and to contribute to or assist in or carry out any part of any such operation.
- (H) To amalgamate or enter into partnership or any joint venture or profit-sharing arrangement or other association with any company, firm or person.
- (I) To purchase or otherwise acquire and undertake all or any part of the business, property and liabilities of any company, firm or person carrying on any business which the Company is authorised to carry on or possessed of any property suitable for the purposes of the Company.
- (J) To promote, or join in the promotion of, any company, whether or not having objects similar to those of the Company.
- (K) To borrow and raise money and to secure or discharge any debt or obligation of or binding on the Company in such manner as may be thought fit and in particular by heritable securities, mortgages and charges upon all or any part of the undertaking, property and assets (present and future) and the uncalled capital of the Company, or by the creation and issue of debentures, debenture stock bonds, or other securities of any description.
- (L) To advance, lend or deposit money or give credit to or with any company, firm or person on such terms as may be thought fit and with or without security.
- (M) To guarantee or give indemnities or provide security, whether by personal bond, heritable security, mortgage or charge upon all or any part of the undertaking, property and assets (present and future) and the uncalled capital of the Company, or by all or any such methods, for the performance of any contracts or obligations, and the payment of capital or principal (together with any premium) and dividends or interest on any shares, debentures or other securities, of any person, firm or company including (without limiting the generality

of the foregoing) any company which is for the time being a holding company of the Company or another subsidiary company of any such holding company or is associated with the Company in business.

- (N) To issue any securities which the Company has power to issue for any other purpose by way of security or indemnity or in satisfaction of any liability undertaken or agreed to be undertaken by the Company.
- (O) To sell, lease, grant licences, servitudes, easements and other rights over, and in any other manner deal with or dispose of, the undertaking, property, assets, rights and effects of the Company or any part thereof for such consideration as may be thought fit, and in particular for shares or other securities, whether fully or partly paid up.
- (P) To procure the registration or incorporation of the Company in or under the laws of any territory outside the United Kingdom.
- (Q) To subscribe or guarantee money for any national charitable, benevolent, public, general or useful object or for any purpose which may be considered likely directly or indirectly to further the interests of the Company or of its members.
- (R)(i) To establish and maintain or contribute to any pension or superannuation funds for the benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, any individuals who are or were at any time in the employment or service of the Company or of any associated company, or who are or were at any time directors or officers of the Company or of any associated company, and the wives, widows, families and dependants of any such individuals; to establish and subsidise or subscribe to any institutions, associations, clubs or funds which may be considered likely to benefit any such persons or to further the interests of the Company or of any associated company; and to make payments for or towards the insurance of any such persons.
- (ii) To establish and maintain, and to lend or contribute to, any scheme for encouraging or facilitating the holding of shares or debentures or other securities in the Company or any associated company by or for the benefit of its employees or former employees, or those of any associated company, or by or for the benefit of such other persons as may for the time being be permitted by law, or any scheme for sharing profits with its employees or those of its associated companies, and (so far as for the time being permitted by law) to lend money to employees of the Company or of any associated company with a view to enabling them to acquire shares in the Company or any associated company.
- (iii) To purchase and maintain insurance for or for the benefit of any persons who are or were at any time directors, officers or employees or auditors of the Company, or of any associated company, or who are or were at any time trustees of any pension fund in which any employees of the Company or of any associated company are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to the Company or associated company or pension fund and (b) to such extent as may be permitted by law otherwise to indemnify or to exempt any such person against or from any such liability.
- (iv) In this clause 3(R):
  - (a) an "associated company" is any company (i) which is the Company's holding company or (ii) in which the Company or its holding company or any of the

predecessors of the Company or of such holding company has any interest whether direct or indirect or (iii) which is in any way allied to or associated with the Company or its holding company or any of the predecessors of the Company or of such holding company, or (iv) which is a subsidiary undertaking of any other associated company; and

- (b) "holding company" and "subsidiary undertaking" have the same meanings as in the Companies Act 1985 as amended by the Companies Act 1989.
- (S) To distribute among members of the Company in specie or otherwise, by way of dividend or bonus or by way of reduction of capital, all or any of the property or assets of the Company, or any proceeds of sale or other disposal of any property or assets of the Company, with and subject to any incident authorised and consent required by law.
- (T) To do all or any of the things and matters aforesaid in any part of the world, and either as principals, agents, contractors, trustees or otherwise, and by or through trustees, agents, subsidiary companies or otherwise, and either alone or in conjunction with others.
- (U) To do all such other things as may be considered to be incidental or conducive to any of the above objects.

And it is hereby declared that the objects of the Company as specified in each of the foregoing paragraphs of this Clause (except only if and so far as otherwise expressly provided in any paragraph) shall be separate and distinct objects of the Company and shall not be in any way limited by reference to any other paragraph or the order in which the same occur or the name of the Company.

- 4 The liability of the members is limited.
- 5 The share capital of the Company is £10,000 divided into 10,000 shares of £1 each<sup>2</sup>.

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<sup>2</sup> Following the passing of written resolution dated 24 September 2002, the share capital of the Company was £1,359,669,800 divided into 1,107,147,650 Ordinary Shares of £1 each, 71,426,175 6.5 per cent Preference Shares of £2 each and 1,096,698 8.25% per cent Preference Shares of £100 each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company, in pursuance of this Memorandum of Association, and we respectively agree to take the number of Shares in the capital of the Company set opposite our respective names.

**Names, Addresses and Descriptions  
of Subscribers**

**Number of Shares taken  
by each Subscriber**

FRANK DEREK PATTERSON  
1 Merchiston Park  
Edinburgh  
Company Secretary

One

GEORGE FRANCIS BOLTON  
15 Buckstone Drive  
Edinburgh  
Company Secretary

One

Total Shares taken:

Two

DATED the Eighteenth day of July 1978  
WITNESS to the above Signatures:

JOHN WATT WIGHTMAN  
19 York Place  
Edinburgh  
Writer to the Signet

**THE COMPANIES ACT 1985**  
**COMPANY LIMITED BY SHARES**

**ARTICLES OF ASSOCIATION**

**Amended by a Written Resolution dated 24 September 2002**

of

**Scottish Courage Limited<sup>1</sup>**  
**Company Number SC65527**

**Preliminary**

- 1** The regulations contained in Table A in The Companies (Tables A to F) Regulations 1985 (as amended so as to affect companies first registered on the date of the adoption of these Articles) shall, except as hereinafter provided and so far as not inconsistent with the provisions of these Articles, apply to the Company to the exclusion of all other regulations or Articles of Association. References herein to regulations are to regulations in the said Table A unless otherwise stated.

**Share Capital**

- 2** The share capital of the Company is £1,359,669,800 divided into 1,107,147,650 Ordinary Shares of £1 each, 71,426,175 6.5 per cent Preference Shares of £2 each (the "**First Preference Shares**") and 1,096,698 8.25 per cent Preference Shares of £100 each (the "**Second Preference Shares**").
- 3** Subject to Section 80 of the Act, all unissued shares shall be at the disposal of the Directors and they may allot, grant options over or otherwise dispose of them to such persons, at such times, and on such terms as they think proper.

**Income**

- 4**
- 4.1** Out of the profits available for distribution and resolved to be distributed, the holders of the First Preference Shares shall be entitled in priority to any payment of dividend to the holders of any other class of shares to be paid in respect of each financial year or other accounting period of the Company a fixed cumulative preferential dividend ("**first preferential dividend**") at the rate of 6.5 per cent per annum on the nominal capital for the time being paid up or credited as paid up thereon, such dividend to be paid half-yearly on 30 June and 31 December (or, if any such date shall be a Saturday, Sunday or public holiday in England, on the first

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business day immediately preceding such date) ("**fixed dividend dates**") in each year in respect of the half-years ending on those respective dates, save that the first such payment in respect of each First Preference Share shall be made on a pro rata basis on 29 December 2000 from the date of issue of the First Preference Shares up to and including 31 December 2000 and in respect of any financial year or other accounting period, the Directors may decide to pay the first preferential dividend in respect of a period shorter than the fixed dividend dates, and if the Directors so decide such payment shall be made in respect of each First Preference Share on a pro rata basis from the last preceding fixed dividend date up to and including such date determined by them (each a "**new dividend date**") and with any balance being payable in respect of each First Preference Share accruing from such new dividend date up to and including the next succeeding fixed dividend date. Payments of first preferential dividends shall be made to holders on the register at any date selected by the Directors up to 42 days prior to the relevant fixed dividend date or relevant new dividend date, as the case may be. Out of profits available for distribution and resolved to be distributed in respect of each financial year or other accounting period the holders of the First Preference Shares shall further be entitled to participate in such further profits at the same time as any dividends are declared, made or paid on Ordinary Shares by the Company up to an amount, in respect of each First Preference Share, of 0.75 per cent per annum of the nominal capital for the time being paid up or credited as paid up thereon. Such payment will be made *mutatis mutandis* on the same basis as the dividend on the Ordinary Shares. Except as provided in this Article, the First Preference Shares do not have any other right to share in the Company's profits.

- 4.2 Out of the profits available for distribution and resolved to be distributed, the holders of the Second Preference Shares shall be entitled in priority to any payment of dividend to the holders of any other class of shares (other than the First Preference Shares, which shall rank in priority) to be paid in respect of each financial year or other accounting period of the Company a fixed cumulative preferential dividend ("**second preferential dividend**") at the rate of 8.25 per cent per annum (exclusive of any associated tax credit available to shareholders) on the nominal capital for the time being paid up or credited as paid up thereon, such dividend to be paid half-yearly on the fixed dividend dates in each year in respect of the half-years ending on those respective dates, save that the first such payment in respect of each Second Preference Share shall be made on a pro rata basis on the fixed dividend date first following the date of issue of the relevant Second Preference Shares (or if such date shall be a Saturday, Sunday or public holiday in England, on the first business day immediately preceding such date) from the date of issue of the relevant Second Preference Shares up to and including such first fixed dividend date. Payments of second preferential dividends shall be made to holders on the register at any date selected by the Directors up to 42 days prior to the relevant fixed dividend date. The holders of the Second Preference Shares shall not be entitled to any further right of participation in the profits of the Company.

## Capital

### 5

- 5.1 On a return of capital on winding-up or (other than on purchase of shares) otherwise, the holders of the First Preference Shares shall be entitled in priority to any payment to the holders of any other class of shares to the repayment of a sum equal to the nominal capital paid up or credited as paid up on the First Preference Shares held by them respectively together with a

sum equal to all arrears (if any) of the said first preferential dividend provided that any such payment in respect of arrears of dividends shall not exceed the amount of the Company's distributable reserves. The holders of the First Preference Shares shall also be entitled to share *pari passu* with the holders of Ordinary Shares in any surplus assets up to a maximum aggregate amount of £10,000,000 but shall not be entitled to any further right of participation in the assets of the Company.

- 5.2 On a return of capital on winding-up or (other than on conversion redemption or purchase of shares) otherwise, the holders of the Second Preference Shares shall be entitled in priority to any payment to the holders of any other class of shares (other than the First Preference Shares, which shall rank in priority) to the repayment of a sum equal to the nominal capital paid up or credited as paid up on the Second Preference Shares held by them respectively together with a sum equal to all arrears and accruals (if any) of the said second preferential dividend irrespective of whether or not such dividend has been declared or earned or become due and payable, to be calculated down to and including the date of commencement of the winding-up (in the case of a winding-up) or the return of capital (in any other case). The holders of the Second Preference Shares shall not be entitled to any further right of participation in the assets of the Company.

### Pre-emption

## 6

- 6.1 For the purposes of this Article:

**"Prescribed Period"** means the period described in Article 6.5;

**"Prescribed Price"** means  $Y+Z/5$

where:

X is the aggregate Market Value (as defined in Article 6.4) of the Relevant First Preference Shares as at the date of the Transfer Notice provided that X shall not be less than A and shall not exceed B;

Y is the aggregate of the nominal value of all the Relevant First Preference Shares;

$Z = X-Y$ ;

A is 87% of the aggregate nominal amount of all the Relevant First Preference Shares (being the aggregate nominal amount of the First Preference Shares originally in issue); and

B is 113% of the aggregate nominal amount of all the Relevant First Preference Shares;

**"Proposing Transferor"** means a person proposing to transfer or dispose of First Preference Shares;

**"Purchasers"** means members who agree to purchase the First Preference Shares to which a Transfer Notice relates (or any of them), and **"Purchaser"** means any such member;

**"Relevant First Preference Shares"** means those First Preference Shares which a Proposing Transferor proposes to transfer or dispose of, as mentioned in the relevant Transfer Notice;



**“Transfer Notice”** means a written notice from a Proposing Transferor to the Company that he desires to transfer or dispose of First Preference Shares, or an interest in First Preference Shares.

**6.2** A Proposing Transferor may make any transfer or disposal of First Preference Shares to Scottish & Newcastle plc (a company registered in Scotland with registered number SC16288 whose registered office is at 33 Ellersly Road, Edinburgh, EH12 6HX) (“**Scottish & Newcastle plc**”) or its nominee or to Financements Agro-Alimentaires Spécifiques S.A.S. (a company limited by shares and organised under the laws of France whose registered office is at 7 rue de Téhéran, 75008 Paris). Except as aforesaid, the right to transfer First Preference Shares or to dispose of any First Preference Shares or any interest in First Preference Shares in the Company shall be subject to the following restrictions and provisions.

**6.3** Except as otherwise permitted by Article 6.2, before transferring or disposing of any First Preference Shares or any interest in any First Preference Shares the Proposing Transferor shall give a Transfer Notice to the Company. The Transfer Notice shall constitute the Company his agent for the sale of the Relevant First Preference Shares (together with all rights then attached thereto) at the Prescribed Price during the Prescribed Period to any member (or nominee of a member) in the same capacity and subject to the same restrictions as his *existing membership and shall not be revocable except with the consent of the Directors.*

#### **6.4**

**6.4.1** The **“Market Value”** of the Relevant First Preference Shares shall be the market value of such shares as determined by Warburg Dillon Read, or, if the Company is not able to procure that Warburg Dillon Read determine the Market Value, the auditors of the Company (Warburg Dillon Read or such auditors being referred to as the **“Valuer”**), in accordance with the following provisions.

##### **6.4.2 Method and adjustments:**

- (a) The Company shall procure that the Valuer shall determine the Market Value of the Relevant First Preference Shares at the close of business as at the date of the Transfer Notice, as appropriate and on the following assumptions and bases:
- (i) valuing the Relevant First Preference Shares as though on a public market and on an arm’s length sale between a willing seller and a willing buyer;
  - (ii) as if the Company is then carrying on business as a going concern and on the assumption that it will continue to do so;
  - (iii) that the Relevant First Preference Shares are capable of being transferred without restriction; and
  - (iv) valuing the Relevant First Preference Shares by comparing their yield with First Preference Shares redeemable in April 2020 which have been issued by other companies (with an equivalent credit rating to Scottish & Newcastle plc).

- (b) The Company shall procure that the Valuer shall determine the Market Value to reflect any other factors which the Valuer reasonably believes should be taken into account.
- (c) If any difficulty arises in applying any of the above assumptions or bases then the Company shall procure that the Valuer shall resolve that difficulty in such manner as it shall in its absolute discretion think fit.
- (d) The Company shall procure that the Valuer shall not take into account any majority premium or minority interest or illiquidity discount when determining Market Value.

**6.4.3 Determination etc:**

- (a) The Company shall procure that the Valuer will determine the Market Value within five business days (being days (other than Saturdays or Sundays) on which commercial banks are open for business in the City of London) from service of the Transfer Notice and shall notify the parties of its determination. The fees of the Valuer shall be borne by the Proposing Transferor.
- (b) The Valuer shall act as an expert and not as an arbitrator and its determination shall be final and binding on the members (in the absence of fraud or manifest error).
- (c) The Company shall allow the Valuer access to all accounting records or other relevant documents of the Company, subject to any confidentiality provisions.

**6.5** The Prescribed Period shall commence on the date on which the Valuer notifies the Directors of its determination of the Market Value (pending which the Directors shall defer the making of the offer) and shall expire three months thereafter.

**6.6** All Relevant First Preference Shares included in any Transfer Notice shall be offered by written notice by the Company to all members holding ordinary shares of the Company (other than the member to whose First Preference Shares the Transfer Notice relates or any member who has given a Transfer Notice in respect of any First Preference Shares or who is bound to give a Transfer Notice in respect of any of his First Preference Shares) for purchase by the relevant member or its nominee at the Prescribed Price. This offer shall be on terms that in case of competition the First Preference Shares so offered shall be sold to the acceptors in proportion (as nearly as may be without involving fractions or increasing the number sold to any member beyond that applied for by him) to their existing holdings of ordinary shares. Such offer shall prescribe a time (not being less than 21 days) within which it must be accepted or in default will lapse.

**6.7** If Purchasers give written notice to the Proposing Transferor agreeing to purchase the Relevant First Preference Shares or any of them within the Prescribed Period, he shall be bound to transfer such Relevant First Preference Shares to the respective Purchasers (or, if relevant, their nominees) upon payment of the Prescribed Price. Every such notice shall state the name and address of the Purchaser and the number of Relevant First Preference Shares agreed to be purchased by him. The purchase shall be completed at a place and time to be appointed by the Directors not being less than three days nor more than 10 days after the date of such notice.

**6.8** If a Proposing Transferor fails or refuses to transfer any Relevant First Preference Shares to a Purchaser (or, if relevant, its nominee) in accordance with this Article, the Directors may authorise some person to execute and deliver the necessary transfer on his behalf. The Company may receive the purchase money in trust for the Proposing Transferor and cause the Purchaser (or, if relevant, its nominee) to be registered as the holder of such Relevant First Preference Shares. The receipt by the Company of the purchase money shall be a good discharge to the Purchaser (who shall not be bound to see to the application of those moneys) and after the Purchaser (or, if relevant, its nominee) has been registered in purported exercise of these powers the validity of the proceedings shall not be questioned by any person.

**6.9** If the Company:

- (a) shall not find Purchasers within the Prescribed Period and gives written notice thereof to the Proposing Transferor; or
- (b) shall give to the Proposing Transferor within the Prescribed Period written notice that the Company has no prospect of finding Purchasers of the Relevant First Preference Shares, or any of them;

the Proposing Transferor at any time thereafter up to the expiration of two months after the end of the Prescribed Period may transfer those Relevant First Preference Shares for which the Company has given notice that it has not found (or has no prospect of finding) Purchasers to any person on a bona fide sale at any price not being less than the Prescribed Price (after deducting, where appropriate, any dividend or other distribution declared or made on or after the date of the Transfer Notice to be retained by the Proposing Transferor).

### **Purchase**

**7**

**7.1** Subject to compliance with the Act but without any further consent or sanction on the part of the holders of the First Preference Shares, the Company may at any time purchase First Preference Shares (1) in the market, or (2) by tender (available alike to all holders of First Preference Shares), or (3) by private treaty, upon such terms and conditions as the Company may think fit. The Company may exercise its rights and powers of purchase as regards the First Preference Shares at its sole discretion.

**7.2** Upon the purchase of any First Preference Shares the Directors may pursuant to the authority given by the passing in General Meeting of the resolution to create the First Preference Shares convert and sub-divide such part of the authorised First Preference Share capital as is represented by First Preference Shares so purchased into shares of any other class of share capital into which the authorised share capital of the Company is or may at that time be divided of a like nominal amount (as nearly as may be) as the shares of such class then in issue or into unclassified shares of the same nominal amount as the First Preference Shares.

### **Transfer of Shares**

**8** Subject to Article 6 and the provisions of Regulation 24 any share may at any time be transferred to a person who is already a member of the Company. Save as aforesaid the Directors shall have an absolute right without assigning any reason therefor to refuse to register any transfer of a share (whether fully paid or not).

## Proceedings at General Meetings

- 9** In the case of a corporation a resolution in writing may be signed on its behalf by a Director or the Secretary thereof or by its duly appointed attorney or duly authorised representative. Regulation 53 shall be extended accordingly. Regulation 53 (as so extended) shall apply mutatis mutandis to resolutions in writing of any class of members of the Company.
- 10** An instrument appointing a proxy may be in any usual or common form or in any other form which the Directors may approve. Such instrument (and, where it is signed on behalf of the appointor by an attorney, the letter or power of attorney or a duly certified copy thereof) must **either** be delivered at such place or one of such places (if any) as may be specified for that purpose in or by way of note to the notice convening the meeting (or, if no place is so specified, at the registered office) before the time appointed for holding the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) for the taking of the poll at which it is to be used **or** be delivered to the Secretary (or the chairman of the meeting) on the day and at the place of, but in any event before the time appointed for holding, the meeting or adjourned meeting or poll. The instrument may be in the form of a facsimile or other machine-made copy and shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates. An instrument of proxy relating to more than one meeting (including any adjournment thereof) having once been so delivered for the purposes of any meeting shall not require again to be delivered for the purposes of any subsequent meeting to which it relates. Regulations 60, 61 and 62 shall not apply.

## Votes of Members

- 11** At a general meeting, but subject to any rights or restrictions attached to any shares, on a show of hands every member present in person or by proxy (or being a corporation present by a duly authorised representative) shall have one vote, and on a poll every member who is present in person or by proxy shall have one vote for every share of which he is the holder. Regulation 54 shall not apply.
- 12** The holders of the First Preference Shares shall, by virtue of and in respect of their holdings of First Preference Shares, have the right to receive notice of, attend, speak and vote at a General Meeting of the Company save that each holder present in person (or, being a company, by a company representative) shall have one vote on a show of hands and on a poll every member who is present in person or by proxy shall have one vote for every £2 in nominal amount of the First Preference Shares registered in the name of such holder.
- 13** In addition holders of First Preference Shares will also be able to vote at a General Meeting of the Company on the following matters:
- 13.1** If and when, at the date of the notice convening such meeting, the first preferential dividend on such shares is six months or more in arrears (and so that for this purpose the first preferential dividend shall be deemed to be payable half-yearly on the dates and in respect of the periods specified in Article 4.1 above); and
- 13.2** if a resolution is to be proposed abrogating, varying or modifying any of the rights or privileges of the holders of the First Preference Shares, or for the winding-up of the Company, or for

sanctioning the sale of the undertaking of the Company, in which case they shall only be entitled to vote on such resolution.

- 14** Whenever the holders of the First Preference Shares are entitled to vote at a General Meeting of the Company pursuant to Article 13 only, upon any resolution proposed at such a General Meeting, on a show of hands every holder thereof who is present in person or (being a corporation) by a representative shall have one vote and on a poll every holder thereof who is present in person or by proxy or (being a corporation) by a representative shall have two votes in respect of each fully-paid First Preference Share registered in the name of such holder,
- 15** The holders of the Second Preference Shares shall, by virtue of and in respect of their holdings of Second Preference Shares, have the right to receive notice of, attend, speak and vote at a General Meeting of the Company only:
- 15.1** if and when, at the date of the notice convening such meeting, the second preferential dividend on such shares is six months or more in arrears (and so that for this purpose the second preferential dividend shall be deemed to be payable half-yearly on the dates and in respect of the periods specified in Article 4.2; or
- 15.2** if a resolution is to be proposed abrogating, varying or modifying any of the rights or privileges of the holders of the Second Preference Shares, or for the winding-up of the Company, or for sanctioning the sale of the undertaking of the Company in which case they shall only be entitled to vote on such resolution.

Save as aforesaid, the Second Preference Shares shall not confer on the holders thereof the right to receive notice of, attend, speak or vote at any General Meeting of the Company but they shall entitle the holders to receive copies of notices of General Meetings for information only.

- 16** Whenever the holders of the Second Preference Shares are entitled to vote at a General Meeting of the Company, upon any resolution proposed at such a General Meeting, on a show of hands every holder thereof who is present in person or (being a corporation) by a representative shall have one vote and on a poll every holder thereof who is present in person or by proxy or (being a corporation) by a representative shall have one vote in respect of each fully paid Second Preference Share registered in the name of such holder.

### **Redemption and purchase**

- 17**
- 17.1** The Company shall, subject to the Companies Act 1985, redeem on 6 December 2040 (the "**Redemption Date**") (or so soon thereafter as the Company shall be able to comply with the provisions of the Companies Act 1985 affecting the redemption of redeemable shares) all of the Second Preference Shares (if any) in issue on that date and the amount payable on redemption thereof shall be the sum specified in Article 17.3 below, provided that if the Company shall be unable in compliance with the Companies Act 1985 to redeem all or any of the Second Preference Shares in accordance with this Article on that date, then the Company shall redeem such number of shares as may lawfully be redeemed at that time, and for the purpose of ascertaining the particular Second Preference Shares to be redeemed shall cause a drawing of lots to be made at the registered office of the Company or at such place as the Directors may decide in the presence of a representative of the auditors of the Company. The

Company shall redeem the remaining shares which otherwise would have fallen to be redeemed in accordance with this Article as soon after such date or dates as the Company shall be able to in compliance with the Companies Act 1985. Not less than 28 days' prior notice in writing of any such redemption shall be given to the holders of the Second Preference Shares.

- 17.2** On the date of redemption of any Second Preference Shares each of the holders of the Second Preference Shares to be redeemed shall be bound to deliver to the Company at its registered office the certificates for such of the Second Preference Shares concerned as are held by him (or, in default, an indemnity satisfactory to the Company). Upon such delivery the Company shall pay to such holder the amount due to him in respect of such redemption.
- 17.3** There shall be paid on each Second Preference Share redeemed under Article 17.1 above the amount paid up thereon together with a sum equal to all arrears and accruals (if any) of the second preferential dividend thereon irrespective of whether or not such dividend has been declared or earned or become due and payable, to be calculated down to and including the Redemption Date.
- 17.4** As from the Redemption Date, the second preferential dividend shall cease to accrue on the Second Preference Shares and the Second Preference Shares shall be treated as having been redeemed, whether or not the certificate therefor shall have been delivered and the redemption monies paid, and such redemption monies, if remaining unpaid, shall constitute a debt of the Company subject to all the provisions of these Articles relating to monies payable on or in respect of a share.
- 17.5** If any holder of any of the Second Preference Shares to be redeemed shall fail or refuse to deliver up the certificate or certificates held by him at the time and place fixed for the redemption of such shares or shall fail or refuse to accept payment of the redemption monies payable in respect thereof, the redemption monies payable to such holder shall be set aside and paid into a separate interest-bearing account with the Company's bankers (designated for the benefit of such holder) and such setting aside shall be deemed for all purposes hereof to be a payment to such holder and all the said holder's rights as a holder of the relevant Second Preference Shares shall cease and determine as from the date fixed for the redemption of such shares and the Company shall thereby be discharged from all obligations in respect thereof. The Company shall not be responsible for the safe custody of the monies so placed on deposit or for interest thereon except such interest as the said monies may earn while on deposit less any expenses incurred by the Company in connection therewith.
- 17.6** The receipt of the registered holder for the time being of any Second Preference Shares or in the case of joint registered holders the receipt of any of them for the monies payable on redemption thereof shall constitute an absolute discharge to the Company in respect thereof.
- 17.7** Upon the redemption of any Second Preference Shares the Directors may pursuant to the authority given by the passing in General Meeting of the resolution to create the Second Preference Shares convert and subdivide the authorised unissued preference share capital existing as a consequence of such redemption into shares of any other class of share capital into which the authorised share capital of the Company is or may at that time be divided of a like nominal amount (as nearly as may be) as the shares of such class then in issue or into unclassified shares of the same nominal amount as the Second Preference Shares.

## Number of Directors

- 18** The Directors shall not be less than two in number. The Company may by Ordinary Resolution from time to time vary the minimum number and/or fix and from time to time vary a maximum number of Directors. Regulation 64 shall be modified accordingly.

## Alternate Directors

**19**

- 19.1** An alternate Director shall (except when absent from the United Kingdom) be entitled to receive notices of meetings of the Directors and of any committee of the Directors of which his appointor is a member and shall be entitled to attend and vote as a Director and be counted in the quorum at any such meeting at which his appointor is not personally present and generally at such meeting to perform all functions of his appointor as a Director and for the purposes of the proceedings at such meeting the provisions of these Articles shall apply as if he were a Director. If he shall be himself a Director or shall attend any such meeting as an alternate for more than one Director, his voting rights shall be cumulative but he shall not be counted more than once for the purposes of the quorum. If his appointor is for the time being absent from the United Kingdom or temporarily unable to act through ill health or disability his signature to any resolution in writing of the Directors shall be as effective as the signature of his appointor. An alternate Director shall not (save as aforesaid) have power to act as a Director, nor shall he be deemed to be a Director for the purposes of these Articles, nor shall he be deemed to be the agent of his appointor. Regulations 66 and 69 shall not apply.
- 19.2** An alternate Director shall be entitled to contract and be interested in and benefit from contracts or arrangements or transactions and to be repaid expenses and to be indemnified to the same extent *mutatis mutandis* as if he were a Director but he shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except only such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct.

## Delegation Of Directors' Powers

- 20** In addition to the powers to delegate contained in Regulation 72, the Directors may delegate any of their powers or discretions (including without prejudice to the generality of the foregoing *all powers and discretions whose exercise involves or may involve the payment of remuneration to or the conferring of any other benefit on all or any of the Directors*) to any 2 Directors acting together or to committees consisting of one or more Directors and (if thought fit) *one or more other named person or persons to be co-opted as hereinafter provided*. Insofar as any such power or discretion is delegated to a committee, any reference in these Articles to the exercise by the Directors of the power or discretion so delegated shall be read and construed as if it were a reference to the exercise thereof by such committee. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations which may from time to time be imposed by the Directors. Any such regulations may provide for or authorise the co-option to the committee of persons other than Directors and may provide for members who are not Directors to have voting rights as members of the committee but so that (a) the number of members who are not Directors shall be less than one-half of the total number of members of the committee and (b) no resolution of the committee shall be effective

unless passed by a majority including at least one member of the committee who is a Director. Regulation 72 shall be modified accordingly.

### **Appointment and Retirement of Directors**

- 21** The Directors shall not be subject to retirement by rotation. Regulations 73 to 75 and the second and third sentences of Regulation 79 shall not apply, and other references in the said Table A to retirement by rotation shall be disregarded.
- 22** The Directors may from time to time appoint any person to an office or employment having a designation or title including the word "Director" or attach to any existing office or employment with the Company such a designation or title and may at any time determine any such appointment or the use of any such designation or title. The inclusion of the word "Director" in the designation or title of such office or employment with the Company shall not imply that the holder thereof is a Director of the Company nor shall such holder thereby be empowered in any respect to act as a Director of the company or be deemed to be a Director for any of the purposes of these Articles.

### **Disqualification and Removal of Directors**

- 23** The office of a Director shall be vacated in any of the events specified in Regulation 81 save that paragraph (e) of such regulation shall not apply and also if he shall in writing offer to resign and the Directors shall resolve to accept such offer.
- 24** Any provision of the Act which, subject to the provisions of the Articles, would have the effect of rendering any person ineligible for appointment or election as a Director or liable to vacate office as a Director on account of his having reached any specified age or of requiring special notice or any other special formality in connection with the appointment or election of any Director over a specified age, shall not apply to the Company.

### **Remuneration of Directors**

- 25** Any Director who serves on any committee, or who otherwise performs services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, may be paid such extra remuneration by way of salary, commission or otherwise or may receive such other benefits as the Directors may determine. Regulation 82 shall be extended accordingly.

### **Proceedings of Directors**

- 26** On any matter in which a Director is in any way interested he may nevertheless vote and be taken into account for the purposes of a quorum and (save as otherwise agreed) may retain for his own absolute use and benefit all profits and advantages directly or indirectly accruing to him thereunder or in consequence thereof. Regulations 94 to 98 shall not apply.
- 27** The Directors, and any committee of the Directors, shall be deemed to meet together if, being in separate locations, they are nonetheless linked by conference telephone or other communication equipment which allows those participating to hear and speak to each other, and a quorum in that event shall be two persons so linked. Such a meeting shall be deemed to



take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

### Notices

- 28 A member whose registered address is not within the United Kingdom shall be entitled to have notices sent to him as if he were a member with a registered address within the United Kingdom and the last sentence of Regulation 112 shall not apply.

### Indemnity

29

- 29.1 Subject to the provisions of and so far as may be consistent with the Act, every Director, Secretary or other officer of the Company shall be indemnified by the Company out of its own funds against and/or exempted by the Company from all costs, charges, losses, expenses and liabilities incurred by him in the actual or purported execution and/or discharge of his duties and/or the exercise or purported exercise of his powers and/or otherwise in relation to or in connection with his duties, powers or office including (without prejudice to the generality of the foregoing) any liability incurred by him in defending any proceedings, civil or criminal, which relate to anything done or omitted or alleged to have been done or omitted by him as an officer or employee of the Company and in which judgment is given in his favour (or the proceedings are otherwise disposed of without any finding or admission of any material breach of duty on his part) or in which he is acquitted or in connection with any application under any statute for relief from liability in respect of any such act or omission in which relief is granted to him by the Court.
- 29.2 Without prejudice to paragraph 29.1 of this Article the Directors shall have power to purchase and maintain insurance for or for the benefit of any persons who are or were at any time Directors, officers or employees of any Relevant Company (as defined in paragraph 29.3 of this Article) or who are or were at any time trustees of any pension fund or employees' share scheme in which employees of any Relevant Company are interested, including (without prejudice to the generality of the foregoing) insurance against any liability incurred by such persons in respect of any act or omission in the actual or purported execution and/or discharge of their duties and/or in the exercise or purported exercise of their powers and/or otherwise in relation to their duties, powers or offices in relation to any Relevant Company, or any such pension fund or employees' share scheme.
- 29.3 For the purpose of paragraph 29.2 of this Article "**Relevant Company**" shall mean the Company, any holding company of the Company or any other body, whether or not incorporated, in which the Company or such holding company or any of the predecessors of the Company or of such holding company has or had any interest whether direct or indirect or which is in any way allied to or associated with the Company, or any subsidiary undertaking of the Company or of such other body.

### Overriding Provisions

- 30 Whenever Scottish & Newcastle plc, or any subsidiary of Scottish & Newcastle plc, shall be the holder of not less than 90 per cent of the issued Ordinary Shares the following provisions shall

apply and to the extent of any inconsistency shall have over-riding effect as against all other provisions of these Articles:

- 30.1** Scottish & Newcastle plc may at any time and from time to time appoint any person to be a Director or remove from office any Director howsoever appointed but so that in the case of a Managing Director his removal from office shall be deemed an act of the Company and shall have effect without prejudice to any claim for damages for breach of any contract of service between him and the Company;
- 30.2** no unissued shares shall be issued or agreed to be issued or put under option without the consent of Scottish & Newcastle plc;
- 30.3** any or all powers of the Directors shall be restricted in such respects and to such extent as Scottish & Newcastle plc may by notice to the Company from time to time prescribe.
- 31** Any such appointment, removal, consent or notice shall be in writing served on the Company and signed on behalf of Scottish & Newcastle plc by any two of its Directors or by any one of its Directors and its Secretary or some other person duly authorised for the purpose. No person dealing with the Company shall be concerned to see or enquire as to whether the powers of the Directors have been in any way restricted hereunder or as to whether any requisite consent of Scottish & Newcastle plc has been obtained and no obligation incurred or security given or transaction effected by the Company to or with any third party shall be invalid or ineffectual unless the third party had at the time express notice that the incurring of such obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the Directors.