

COMPANIES ACT 2014
CONSTITUTION
OF
DEPOSIT RETURN SCHEME IRELAND COMPANY LIMITED BY GUARANTEE

MATHESON LLP
70 Sir John Rogerson's Quay
Dublin 2
Ireland

TEL: + 353 1 232 2000
FAX: +353 1 232 3333

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MEMORANDUM OF ASSOCIATION

OF

DEPOSIT RETURN SCHEME IRELAND COMPANY LIMITED BY GUARANTEE

- 1 The name of the company is: Deposit Return Scheme Ireland Company Limited by Guarantee.
- 2 The Company is a company limited by guarantee, registered under Part 18 of the Companies Act 2014.
- 3 The objects for which the Company is established are:
 - 3.1 To establish and manage a deposit return scheme for beverage containers in Ireland.
 - 3.2 To carry on all or any of the businesses as aforesaid either as a separate business or as the principal business of the Company and to carry on any other business (whether manufacturing or otherwise) (except the issuing of policies of insurance) which may seem to the Company capable of being conveniently carried on in connection with the above objects or calculated directly or indirectly to enhance the value of or render more profitable any of the Company's property.
 - 3.3 To purchase, take on lease or in exchange or otherwise acquire real and chattel real property of all kinds and in particular lands, tenements and hereditaments of any tenure whether subject or not to any charges or incumbrances, and to hold or to sell, develop, let, alienate, mortgage, charge, or otherwise deal with all or any of such lands, tenements or hereditaments for such consideration and on such terms as may be considered expedient.
 - 3.4 To improve, manage, cultivate, develop, exchange, let on lease or otherwise, mortgage, charge, sell, dispose of, turn to account, grant rights and privileges in respect of, or otherwise deal with all or any part of the property and rights of the Company.
 - 3.5 To acquire and hold shares and stocks of any class or description, debentures, debenture stock, bonds, bills, mortgages, obligations, investments and securities of all descriptions and of any kind issued or guaranteed by any company, corporation or undertaking of whatever nature and wheresoever constituted or carrying on business or issued or guaranteed by any government, state, dominion, colony, sovereign ruler, commissioners, trust, public, municipal, local or other authority or body of whatsoever nature and wheresoever situated and investments, securities and property of all descriptions and of any kind, including real and chattel real estates, mortgages, reversions, contingencies and choses in action.
 - 3.6 To invest any moneys of the Company in such investments and in such manner as may from time to time be determined, and to hold, sell or deal with such investments and generally to purchase, take on lease or in exchange or otherwise acquire any real and personal property and rights or privileges.

- 3.7 To purchase or otherwise acquire and undertake, the whole or any part of the business, goodwill, property, assets and liabilities of any person firm or company, or to acquire an interest in, amalgamate with, or enter into partnership or into any arrangement for sharing profits, union of interests, or for co-operation, joint venture or for mutual assistance or reciprocal concession with any such person, firm or company, and to give or accept by way of consideration for any of the acts or things aforesaid or property acquired any debentures or securities that may be agreed upon, and to hold and retain or sell, mortgage and deal with any debentures or securities so received.
- 3.8 To sell or otherwise dispose of the whole or any part of the business, undertaking, property or investments of the Company, either together or in portions for such consideration and on such terms as may be considered expedient.
- 3.9 To pay for any property, assets or rights acquired by the Company, and to discharge or satisfy any debt, obligation or liability of the Company, in cash or by any other securities which the Company has power to issue, or partly in one way and partly in another, and generally on such terms as may be considered expedient.
- 3.10 To advance, deposit or lend money, securities and property to or with such persons and on such terms as may seem expedient.
- 3.11 To borrow or raise money in any such manner and on such terms and for such purposes as the Company shall think fit, whether alone or jointly and / or severally with any person or persons, including, without prejudice to the generality of the foregoing, by the issue of debentures or debenture stock (perpetual or otherwise), and to secure, with or without consideration, the payment or repayment of any money borrowed, raised, or owing or any debt, obligation or liability of the Company or of any person whatsoever in such manner and on such terms as the Company shall think fit, and in particular by mortgage, charge, lien or debenture or any other security of whatsoever nature or howsoever described, perpetual or otherwise, charged upon all or any of the Company's property, undertaking, rights or assets of any description, both present and future and to purchase, redeem or pay off any such securities.
- 3.12 To pay and discharge, and to give guarantees, indemnities, counter indemnities and all manners of assurances against loss in respect of, any or all of the debts, obligations and liabilities of any person, firm or corporation, wherever resident, formed or incorporated and whether or not in any manner connected with or related to the Company, in favour of any person, firm or corporation (and in the case of any such guarantee, indemnity, counter indemnity or assurance whether by personal covenant or by mortgaging, charging, pledging or otherwise securing all or any part of the undertaking, property, assets and revenues present and future of the Company or by any combination of such methods), in each case whether with or without consideration or benefit to the Company and notwithstanding that the Company may derive no benefit from the same at any time, and whether or not the same is in the interests of the Company and notwithstanding that it may involve the use of the Company's property for the benefit of one or more directors of the Company or of any other person; the power contained in this paragraph shall be a separate, distinct and independent object of the Company and not ancillary or incidental to any of the other objects set out in any other paragraph, nor shall it be limited or restricted by references to or interference from the terms of any other paragraph.

- 3.13 As an object of the Company and as a pursuit in itself or otherwise and whether for the purpose of making a profit or avoiding a loss or managing a current or interest rate exposure or any other exposure or for any other purpose whatsoever, to engage in currency exchange, interest rate and commodity transactions, derivative transactions and any other financial or other transactions of whatever nature in any manner and on any terms and for any purposes whatsoever, including, without prejudice to the generality of the foregoing, any transaction for the purpose of, or capable of being for the purposes of, avoiding, reducing, minimising, hedging against or otherwise managing the risk of any loss, cost, expense, or liability arising, or which may arise, directly or indirectly, from a change or changes in any interest rate or currency exchange rate or in the price or value of any property, asset, commodity, index or liability or from any other risk or factor affecting the Company's business, including but not limited to dealings whether involving purchases, sales or otherwise in foreign currency, spot and / or forward rate exchange contracts, futures, options, forward rate agreements, swaps, caps, floors, collars and any such other foreign exchange or interest rate or commodity or other hedging arrangements and such other instruments as are similar to, or derived from, any of the foregoing.
- 3.14 To the extent that the same is permitted by law, to give financial assistance for the purpose of an acquisition made or to be made by any person of any shares in the Company's holding company for the time being and to give such assistance by any means howsoever permitted by law.
- 3.15 To apply for, purchase or otherwise acquire and hold, use, develop, protect, sell, licence or otherwise dispose of, or deal with patents, brevets d'invention, copyrights, designs, trade marks, secret processes, know-how and inventions and any interest therein.
- 3.16 To form, promote, finance or assist any other company or association, whether for the purpose of acquiring all or any of the undertaking, property and assets of the Company or for any other purpose which may be considered expedient.
- 3.17 To facilitate and encourage the creation, issue, conversion and offering for public subscription debentures, debenture stocks, bonds, obligations and securities and to act as trustees in connection with any such securities and to take part in the conversion of business concerns and undertakings into companies.
- 3.18 To draw, make, accept, endorse, discount, negotiate, and issue bills of exchange, promissory notes, bills of lading and other negotiable or transferable instruments.
- 3.19 To act as managers, consultants, supervisors and agents of other companies or undertakings and to provide for such other companies or undertakings, management, advisory, technical, purchasing, selling and other services, and to enter into such contracts and agreements as are necessary or advisable in connection with the foregoing.
- 3.20 To establish, regulate and discontinue franchises, agencies and branches, appoint agents and others to assist in the conduct or extension of the Company's business and to undertake and transact all kinds of trust, agency and franchise business which an individual may legally undertake.

- 3.21 To make gifts or grant bonuses to the directors or any other persons who are or have been in the employment of the Company including alternate directors.
- 3.22 To make such provision for the education and training of employees and prospective employees of the Company and others as may seem to the Company to be advantageous to or calculated, whether directly or indirectly, to advance the interests of the Company or any member thereof.
- 3.23 To provide for the welfare of persons in the employment of or holding office under or formerly in the employment of or holding office under the Company or directors or ex-directors of the Company and the wives, widows and families dependents or connections of such persons by grants of money, pensions or other payments and by forming and contributing to pension, provident or benefit funds or co-partnership schemes for the benefit of such persons and to form, subscribe to or otherwise aid charitable, benevolent, religious, scientific, national or other institutions, exhibitions or objects which shall have any moral or other claims to support or aid by the Company by reason of the locality of its operation or otherwise.
- 3.24 To insure the life of any person who may, in the opinion of the Company, be of value to the Company, as having or holding for the Company interests, goodwill or influence or otherwise and to pay the premiums on such insurance.
- 3.25 To undertake and execute the office of nominees for the purpose of holding and dealing with any real or personal property or security of any kind for or on behalf of any government, local authority, mortgagee, company, person or body; to act as nominee or agent generally for any purpose and either solely or jointly with another or others for any person, company, corporation, government, state or province, or for any municipal or other authority or local body; to undertake and execute the office of trustee, executor, administrator, registrar, secretary, committee or attorney; to undertake the management of any business or undertaking or transaction, and generally to undertake, perform and fulfil any trust or agency business of any kind and any office of trust or confidence.
- 3.26 To constitute any trusts with a view to the issue of preferred and deferred securities based on or representing any assets specifically appropriated for the purpose of any such trust and to settle and regulate and if thought fit to undertake and execute any such trusts and to issue, dispose of or hold any such preferred, deferred or other special securities.
- 3.27 To vest any real or personal property, rights or interest acquired by or belonging to the Company in any person or company on behalf of or for the benefit of the Company, and with or without any declared trust in favour of the Company.
- 3.28 To enter into any arrangements with any governments or authorities (supreme, municipal, local or otherwise), or any corporations, companies or persons that may seem conducive to the attainment of the Company's objects, or any of them and to obtain from any such government, authority, corporation, company, or person any charters, contracts, decrees, rights, privileges and concessions, including grant aid, which the Company may think desirable, and to carry out, exercise and comply with any such charters, contracts, decrees, rights, privileges, concessions and grant agreements.

- 3.29 To apply for, promote and obtain any Act of the Oireachtas, provisional order or licence of the Minister for Jobs, Enterprise and Innovation or other authority for enabling the Company to carry any of its objects into effect, or for effecting any modification of the Company's constitution, or for any other purpose which may seem expedient, and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice the Company's interests.
- 3.30 To remunerate by cash payment any person or company for services rendered or to be rendered to the Company whether in the conduct or management of its business or any debentures or other securities of the Company or in or about the formation or promotion of the Company.
- 3.31 To distribute in specie or otherwise as may be resolved, any assets of the Company among its members and in particular the shares, debentures, or other securities of any other company belonging to the Company or of which the Company may have the power of disposing.
- 3.32 To procure the Company to be registered in any part of the world.
- 3.33 To transact or carry on any other business which may seem to the Company capable of being conveniently carried on in connection with any of these objects or calculated directly or indirectly to enhance the value of or facilitate the realisation of or render profitable any of the Company's property or rights.
- 3.34 To do all or any of the above things in any part of the world, either alone or in conjunction with others and either as principals, agents, contractors, factors, trustees or otherwise and either by or through agents, contractors, factors, trustees or otherwise.

The word "company" in this clause except where used in reference to this Company, where the context so admits, shall be deemed to include any partnership or other body of persons whether incorporated or not incorporated or whether domiciled or registered in Ireland or elsewhere and the intention is that in the construction of this clause the objects set forth in each of the foregoing sub-paragraphs shall, except where otherwise expressed in the same paragraph, be regarded as independent objects and accordingly shall in no way be limited or restricted by reference to or inference from the terms of any other sub-clause or the name of the Company, but may be carried out in as full and ample a manner and construed in as wide a sense as if each defined the objects of a separate and distinct company.

Provided always that the provisions of this clause shall be subject to the Company obtaining, where necessary for the purpose of carrying any of its objects into effect, such licence, permit or authority as may be required by law.

- 4 The liability of the members is limited.
- 5 Every member of the Company undertakes to contribute to the assets of the Company, if the Company is wound up while he or she is a member or is wound up within one year after the date on which he or she ceases to be a member, for:
- (a) the payment of the debts and liabilities of the Company contracted before he or she ceases to be a member, and the costs, charges and expenses of winding up; and
 - (b) the adjustment of the rights of contributories among themselves,

such amount as may be required, not exceeding €1.00.

ARTICLES OF ASSOCIATION

OF

DEPOSIT RETURN SCHEME IRELAND COMPANY LIMITED BY GUARANTEE

1 Interpretation

1.1 In this Constitution:

"Act" means the Companies Act 2014 and every statutory modification or re-enactment thereof for the time being in force;

"Affiliate" means, in relation to any person, a subsidiary of that person or a holding company of that person or any other subsidiary of that holding company;

"Applicable Law" means: (a) the common law; and (b) all laws, by-laws, statutes, regulations, rules, orders, instruments, decrees, directives, decisions, injunctions, rulings and judgements of any government, local government, international, supranational, executive, administrative, judicial or regulatory authority or agency whether of Ireland, the European Union or elsewhere and all approved codes of practice (whether voluntary or compulsory) in each case relating to the protection of the Environment or of human health or safety or welfare or to the manufacture, formulation, processing, treatment, storage, containment, labelling, handling, transportation, distribution, recycling, reuse, release, disposal, removal, remediation, abatement or clean-up of any Contaminant;

"Category of Producer" means Producer Category 1, Producer Category 2, Producer Category 3 and Producer Category 4;

"Class of Member" or **"Classes of Member"** means the [fivesix](#) classes of member of the Company, specified in regulation 3.1;

"Company" means Deposit Return Scheme Ireland Company Limited by Guarantee;

"Constitution" has the meaning set out in regulation 1.2;

"Contaminant" means any material, substance, chemical, gas, liquid, waste, effluent, pollutant or contaminant which, whether on its own or admixed with another, is identified or defined in or regulated by or pursuant to any Applicable Laws or which upon release into the Applicable Laws presents a danger to the Environment or to the health or safety or welfare of any person;

"director" means a director of the Company and the **"directors"** means the directors or any of them acting as the board of directors of the Company;

"Director Member" means each person who, as a consequence of being a director, is admitted to membership of the Company in accordance with regulation 5.1;

"Distributor Member" means each person admitted as a member of the Company and meeting the Membership Criteria for a Distributor Member;

"DRS Regulations" means S.I. No. 599/2021 - Separate Collection (Deposit Return Scheme) Regulations 2021;

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992, as adjusted by the Protocol signed at Brussels on 17 March 1993;

"EEA state" means a state, including the State, which is a contracting party to the EEA Agreement;

"electronic communication", "electronic signature" and "advanced electronic signature" each has the meaning set out in the Electronic Commerce Act 2000;

"Environment" includes (a) any and all buildings, structures, fixtures, fittings, appurtenances, pipes, conduits, valves, tanks, vessels and containers whether above or below ground level, and (b) ambient air, land surface, sub-surface strata, soil, surface water, ground water, river sediment, marshes, wet lands, flora and fauna;

"Establishment Board" has the meaning given to that term in regulation 17.1;

"Industry Director" means each Producer Director and Retailer Director;

"Industry Member" has the meaning given to that term in regulation 3.1.4;

"member" means each Producer Member, Retailer Member, Producer & Retail Member, Return Point Operator Member ~~and~~, Director Member and Distributor Member;

"Member Misconduct" means: (i) failing to comply with the Scheme Rules, or the relevant member's Membership Agreement; (ii) failing to provide any information requested by the secretary pursuant to regulation 4.4; (iii) failing to comply with Applicable Law; (iv) acting in a manner reasonably likely to bring the Company or the Scheme into disrepute or to threaten the continued status of the Company as approved body for the purposes of the DRS Regulations;

"Membership Agreement" means the membership agreement entered into between the Company and each member from time to time;

"Membership Criteria" means the criteria for eligibility to belong to a Class of Member, specified in Schedule 1 hereto;

"Nominations Committee" means the committee of the directors standing established from time to time for the purposes of, among other things, considering and, if thought fit, recommending (in the case of Other Directors) or approving (in the case of Industry Directors) persons for the role of director of the Company;

"ordinary resolution" means a resolution passed by a simple majority of the votes cast by members of the Company as, being entitled to do so, vote in person or by proxy at a general meeting of the Company;

"Other Directors" means those persons who may be appointed as directors of the Company as specified regulation 16;

"Producer & Retailer Members" means each person admitted as a member of the Company and meeting the Membership Criteria for a Producer & Retailer Member;

"Producer 1 Director" means each director elected by the vote of Producer Members and Producer & Retailer Members in accordance with regulation 21.2.1;

"Producer 2 Director" means each director elected by the vote of Producer Members and Producer & Retailer Members in accordance with regulation 21.2.2;

"Producer 3 Director" means the director elected by the vote of Producer Members and Producer & Retailer Members in accordance with regulation 21.2.3;

"Producer 4 Director" means the director elected by the vote of Producer Members and Producer & Retailer Members in accordance with regulation 21.2.4;

"Producer Category 1" means the category of Producer Members and Producer & Retailer Members specified in paragraph 3(a) of Schedule 1;

"Producer Category 2" means the category of Producer Members and Producer & Retailer Members specified in paragraph 3(b) of Schedule 1;

"Producer Category 3" means the category of Producer Members and Producer & Retailer Members specified in paragraph 3(c) of Schedule 1;

"Producer Category 4" means the category of Producer Members and Producer & Retailer Members specified in paragraph 3(d) of Schedule 1;

"Producer Director" means a Producer 1 Director, Producer 2 Director, Producer 3 Director and Producer 4 Director;

"Producer Members" means each person admitted as a member of the Company and meeting the Membership Criteria for a Producer Member;

"register of members" means the register of members of the Company;

"registered person" means such person as is authorised to bind the Company in accordance with section 39 of the Act;

"regulations" means provisions of this Constitution, as amended from time to time;

"Retailer 1 Director" means each director elected by the vote of Retailer Members in accordance with regulation 21.2.5;

"Retailer 2 Director" means each director elected by the vote of Retailer Members in accordance with regulation 21.2.6;

"Retailer Category 1" means the category of Retailer Members specified in paragraph 4(a) of Schedule 1;

"Retailer Category 2" means the category of Retailer Members specified in paragraph 4(b) of Schedule 1;

"Retailer Director" means a Retailer 1 Director and Retailer 2 Director;

"Retailer Members" means each person admitted as a member of the Company and meeting the Membership Criteria for a Retailer Member;

"Return Point Operator Member" means each person admitted as a member of the Company and meeting the Membership Criteria for a Return Point Operator Member;

"Scheme" means the deposit return scheme established under the DRS Regulations;

"Scheme Rules" means the rules for the operation of the Scheme, as approved from time to time by the directors;

"secretary" means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary;

"single-member company" means a company which, for whatever reason, has, for the time being, a sole member (and this applies notwithstanding a stipulation in this Constitution that there be two members, or a greater number);

"special resolution" means a resolution passed by not less than 75 per cent of the votes cast by such members of the Company as, being entitled to do so, vote in person or by proxy at a general meeting of the Company;

"State" means the Republic of Ireland; and

"Suitable for Directorship" means, in the case of a director or prospective director, possessing the skills, knowledge, expertise and attributes necessary for serving as director of the Company, as determined by the directors from time to time.

- 1.2 The optional provisions of the Act (as defined by section 1177(2) of the Act) shall apply to the Company save to the extent that they are excluded or modified by this constitution and such optional provisions (as so excluded or modified) together with the regulations contained in this constitution shall constitute the regulations of the Company (the **"Constitution"**).
- 1.3 Words denoting the singular number include the plural number and vice versa and words denoting a gender include each gender.
- 1.4 Words or expressions contained in this Constitution which are not defined in this Constitution but are defined in the Act have the same meaning as in the Act at the date of adoption of this Constitution.
- 1.5 The terms "subsidiary" and "holding company" shall have the meanings ascribed to them in the Act.

- 1.6 Headings are inserted for convenience only and do not affect the construction of this Constitution.
- 1.7 Any reference to a “person” shall be construed as a reference to any individual, firm, company, corporation, undertaking, government, state or agency of a state or any association or partnership (whether or not having separate legal personality).
- 1.8 Powers of delegation shall not be restrictively construed but the widest interpretation shall be given to them and except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under this Constitution or under another delegation of the power.
- 1.9 References to “writing” mean the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, and “written” shall be construed accordingly.
- 1.10 Any reference to any statute, statutory provision or to any order or regulation shall (save as expressly provided in this Constitution) be construed as a reference to the statute, statutory provision, order or regulation as extended, modified, amended, replaced or re-enacted from time to time (whether before or after the date of adoption of this Constitution) and all statutory instruments, regulations and orders from time to time made thereunder or deriving validity therefrom (whether before or after the date of adoption of this Constitution).

MEMBERSHIP

2 Membership of the Company

- 2.1 The subscribers to the Constitution shall be deemed to have agreed to become members of the Company, and, on its registration, shall be entered as members in the register of members.
- 2.2 The number of members with which the Company was registered was eight.
- 2.3 Such other persons, being persons who are admitted to membership of the Company in accordance with the procedures prescribed by regulations 4 and 5 and whose names are entered in the register of members, shall be members of the Company.
- 2.4 There shall be no maximum number of persons who may be members of the Company.

3 Classes of Member

- 3.1 There are ~~five~~six Classes of Member of the Company:
- 3.1.1 Producer Members;
- 3.1.2 Retailer Members;
- 3.1.3 Producer & Retailer Members;

(such members being referred to together as "**Industry Members**");

3.1.4 Return Point Operator Members; ~~and~~

3.1.5 Director Members~~;~~ and

3.1.6 Distributor Members.

3.2 Each member must belong to one Class of Member. No member can belong to more than one Class of Member.

4 **Industry Members ~~and~~, Return Point Operator Members and Distributor Members**

4.1 To be eligible to become an Industry Member ~~or~~, a Return Point Operator Member or a Distributor Member, a person must satisfy the Membership Criteria for one such Class of Member.

4.2 To become an Industry Member ~~or~~, a Return Point Operator Member or a Distributor Member, a person must apply for membership of the Company in the manner prescribed by the directors of the Company from time to time. Each application for membership must include all information required by the directors to accompany such application.

4.3 On receipt of an application for membership duly made in accordance with regulation 4.2, the secretary may:

4.3.1 arrange for the relevant applicant to be registered as a member in the register of members;

4.3.2 request such further information from the applicant in relation to their application for membership of the company as the secretary may require for the purposes of considering whether the applicant satisfies the Membership Criteria, which the relevant applicant shall provide promptly and in the format so requested; or

4.3.3 if the directors:

(i) determine that the applicant does not satisfy the Membership Criteria in respect of any Class of Member; or

(ii) have sufficient grounds to believe that the applicant has committed or is likely to commit Member Misconduct,

decline to register the applicant as member in the register of members.

4.4 Following the admission of an Industry Member ~~or~~, Return Point Operator Member or Distributor Member as member of the Company, the directors shall determine what Class of Member (and in the case of a Producer Member, what Category of Producer) to which the relevant member belongs and shall update the records of the Company accordingly. To assist the directors in making this determination, each Industry Member ~~or~~, Return Point Operator

Member or Distributor Member shall, promptly on request, provide to the secretary such further information as the secretary may request and in the format so requested.

- 4.5 If the directors determine that an Industry Member~~-or~~, Return Point Operator Member or Distributor Member ceases to meet the Membership Criteria, the relevant member's membership of the Company shall be terminated by removing the member from the register of members. If at any time an Industry Member~~-or~~, Return Point Operator Member or Distributor Member ceases to meet the Membership Criteria for any Class of Member, the relevant member must promptly inform the secretary in writing.
- 4.6 If the directors determine that an Industry Member has ceased to meet the Membership Criteria in respect of one Class of Member (or in the case of a Producer Member, one Category of Producer) but instead meets the Membership Criteria in respect of another Class of Member (or in the case of a Producer Member, another Category of Producer), the records of the Company shall be updated accordingly. If at any time an Industry Member ceases to meet the Membership Criteria for the Class of Members (or in the case of a Producer Member, the Category of Producer) to which they belong but instead meets the Membership Criteria in respect of another Class of Member (or Category of Producer, as appropriate), the relevant member must promptly inform the secretary in writing.
- 4.7 If there are reasonable grounds to believe that an Industry Member~~-or~~, Return Point Operator Member or Distributor Member has committed Member Misconduct, the directors may determine that the relevant member's membership be terminated and the register of members be updated to reflect the termination accordingly.
- 4.8 Should any dispute arise in relation to the admission of an Industry Member~~-or~~, a Return Point Operator Member or a Distributor Member as member, satisfaction by any applicant or member of the Membership Criteria, the termination of membership of an Industry Member~~-or~~, a Return Point Operator Member or a Distributor Member or any change of Class of Member of an Industry Member~~-or~~, a Return Point Operator Member or a Distributor Member, such disputes shall be determined in accordance with the dispute resolution mechanism specified in the Scheme Rules or the relevant member's Membership Agreement.

5 Director Members

- 5.1 Each person who is duly appointed as a director shall be admitted as a Director Member and the register of members shall be updated promptly thereafter to reflect such admission.
- 5.2 If any director who is a Director Member ceases to be a director (whether by retirement, resignation, removal or otherwise), that director shall be deemed to cease to be a Director Member with effect from the time that person ceased to be a director and the register of members shall be updated promptly thereafter to reflect such ceasing to be a Director Member.

6 Termination of Membership - Supplemental

- 6.1 A member may terminate his or her membership by serving written notice to that effect upon the directors at the registered office of the Company, such notice to expire no earlier than the date of service of the notice of resignation.

6.2 The death or bankruptcy of a member shall also terminate their membership.

7 Rights of Members

7.1 Director Members shall be entitled to receive notice of, to attend, and to speak at, general meetings of the Company and shall be entitled to shall be entitled to vote on any resolution proposed at general meetings of the Company.

7.2 ~~7.1 All~~ No Producer mMembers, ~~other than~~ Retailer Member, Producer & Retailer Member, Return Point Operator Members, or Distributor Member shall be entitled to receive notice of, to attend, and to speak at, general meetings of the Company or be entitled to vote on any resolution proposed at general meetings of the Company.

~~7.2 Subject to clause 7.3, at general meetings:~~

~~7.2.1 Producer Members, Retailer Members and Producer & Retailer Members shall be entitled to vote on the appointment and re-appointment of the Company's statutory auditors and on matters concerning the remuneration of the Company's statutory auditors and no other matters;~~

~~7.2.2 Director Members shall be entitled to vote on any business duly brought before the meeting (including, for the avoidance of doubt, the matters specified in Regulation 7.2.1) and~~

~~7.2.3 Return Point Operator Members shall have no right to vote on any business brought before the meeting.~~

~~7.3 During the two years commencing on the date of the adoption of this Constitution, only Director Members shall be eligible to vote on special resolutions pursuant to section 1184(1), 1187(1) or 1188(1) of the Act. After the second anniversary of the adopting of this Constitution, each Producer Member, Retailer Member, Producer & Retailer Member and Director Member may vote on any such special resolutions.~~

7.3 ~~7.4~~ Producer Members, Retailer Members and Producer & Retailer Members shall ~~also~~ have the right to vote on the election of Industry Directors in accordance with Regulation 21. No other members shall be permitted to vote on such elections.

7.4 ~~7.5~~ The use of income and assets of the Company shall be applied solely towards the promotion of the objects set out in the Memorandum of Association of the Company and no portion of the Company's income or property shall be paid or transferred directly or indirectly by way of dividend, bonus, distribution or otherwise howsoever by way of profit to the members of the Company, provided that nothing in this Regulation ~~7.5~~ 7.4 shall prevent the payment of remuneration and expenses to the directors of the Company in accordance with these regulations.

7.5 ~~7.6~~ The rights of any members as such shall be personal and shall not be transferrable, transmissible or chargeable by their own act, by operation of law or otherwise.

CORPORATE CAPACITY AND AUTHORITY

8 Registered Person

Where the board of directors authorises any person as being a person entitled to bind the Company (not being an entitlement to bind that is, expressly or impliedly, restricted to a particular transaction or class of transactions), the Company may notify the Registrar of the authorisation in accordance with section 39 of the Act.

9 Powers of Attorney

The Company may empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds or do any other matter on its behalf in any place whether inside or outside the State. A deed signed by such attorney on behalf of the Company shall bind the Company and have the same effect as if it were under its common seal.

10 The Common Seal

10.1 The Company shall have a common seal or seals that shall state the Company's name, engraved in legible characters.

10.2 The Company's seal shall be used only by the authority of its directors, or of a committee of its directors authorised by its directors in that behalf. Subject to regulation 10.3, any instrument to which the Company's seal shall be affixed shall be:

10.2.1 signed by a director and be countersigned by the secretary or by a second director of it or by some other person appointed for the purpose by its directors or by a foregoing committee of them; or

10.2.2 signed by a person (including a director) appointed for the purpose by its directors or a committee of its directors authorised by its directors in that behalf.

10.3 If there is a registered person in relation to the Company, the Company's seal may be used by such person and any instrument to which the Company's seal shall be affixed when it is used by the registered person may be signed by that registered person and shall not require countersignature by a second person.

10.4 Any instrument to which the common seal is affixed shall not be signed by the same person acting both as director and secretary.

10.5 Section 43(2) and section 43(3) of the Act are disappplied.

11 Power for Company to have Official Seal for use Abroad

11.1 The Company may have for use in any place abroad (being a territory, district or place not situate in the State) an official seal which shall resemble the common seal of the Company with the addition on its face of the name of every place abroad where it is to be used.

- 11.2 A deed or other document to which an official seal is duly affixed shall bind the Company as if it had been sealed with the common seal of the Company.
- 11.3 If the Company has an official seal for use in any place abroad it may, by writing under its common seal, authorise any person appointed for the purpose in that place (the "agent") to affix the official seal to any deed or other document to which the Company is party in that place.
- 11.4 The authority of the agent shall, as between the Company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or, if no period is there mentioned, then until the notice of revocation or determination of the agent's authority has been given to the person dealing with him or her.
- 11.5 The person affixing an official seal shall, by writing under his or her hand, certify on the deed or other instrument to which the seal is affixed, the date on which and the place at which it is affixed.

12 **Debentures**

12.1 The Company shall:

12.1.1 neither apply to have securities (or interests in them) admitted to trading or to be listed on; nor

12.1.2 have securities (or interests in them) admitted to trading or listed on,

any market, whether a regulated market or not, in the State or elsewhere; however nothing in this regulation prohibits the admission to trading or listing (or an application being made therefor) on any market of debentures (or interests in them) for the purposes of any of paragraphs (a) to (e) of section 68(3) of the Act.

CORPORATE GOVERNANCE

13 **Company Secretary**

13.1 The Company shall have a secretary, who may be one of the directors.

13.2 The secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

14 **Directors**

14.1 The Company shall have at least two directors but not more than twelve directors. Notwithstanding any provisions to the contrary in this Constitution, if at any time there is no director appointed to the Company, the last director to cease to be a director (or in the case of their death, that former director's personal representative) shall appoint a replacement director by resolution in writing.

14.2 In accordance with section 137 of the Act, at least one of the directors shall be a person who is resident in an EEA state.

15 **Board Composition**

The board of directors of the Company is constituted as follows:

15.1 two Producer 1 Directors;

15.2 two Producer 2 Directors;

15.3 one Producer 3 Director;

15.4 one Producer 4 Director;

15.5 one Retailer 1 Director;

15.6 one Retailer 2 Director; and

15.7 up to four Other Directors.

16 **Other Directors**

At any time, in addition to Industry Directors, the directors may appoint up to four other persons as directors:

16.1 one director, who shall serve as non-executive chairperson of the board of directors;

16.2 up to two independent non-executive directors (the "**INEDs**"); and

16.3 one further person (who may be the chief executive officer of the Company, if any such person is appointed as chief executive officer).

17 **Establishment Board**

17.1 The directors as at the date of the adoption of ~~this~~[the Company's Constitution](#) ~~shall~~[by way of unanimous written resolution on 29 November 2022](#) constituted the "**Establishment Board**" and those directors specified in the first column of the table at Schedule 2 ~~shall be~~[were](#) deemed to be Producer 1 Directors, Producer 2 Directors, a Producer 3 Director, a Producer 4 Director, a Retailer 1 Director, a Retailer 2 Director or Other Directors as specified opposite such directors' names in the second column of the table at Schedule 2.

17.2 Those directors who constitute the Establishment Board shall retire in accordance with the timetable set out in Part A of Schedule 3.

17.3 Each director retiring in accordance with this Regulation 17 shall no longer form part of the Establishment Board but shall be eligible to serve one further term of four years, if elected or otherwise re-appointed as director in accordance with these Regulations.

18 **Term of Office**

- 18.1 Other than in respect of directors on the Establishment Board, all directors will serve a term of four years that can be renewed once for one subsequent four year term.
- 18.2 Once a director's term of appointment has expired and they are not re-elected or are not eligible for re-election, that director shall not be eligible to be nominated, or otherwise co-opted, to act as director again.

19 **Appointment of Directors**

- 19.1 Any purported appointment of a director without that director's consent shall be void.
- 19.2 Following the retirement of each director constituting the Establishment Board, directors of the Company shall be appointed as follows:
- 19.2.1 the Producer Members, Retailer Members and Producer & Retailer Members shall elect Producer Directors and Retailer Directors in accordance with Regulation 21; and
- 19.2.2 the directors may from time to time appoint any person, recommended to the directors by the Nominations Committee as Suitable for Directorship, as an Other Director.
- 19.3 The application of section 144(3) of the Act shall be modified accordingly.

20 **Retirement by Rotation**

- 20.1 The directors (other than those directors forming part of the Establishment Board) shall retire in accordance with the timetable specified in Part B of Schedule 3.
- 20.2 In the event that more than one director is due to resign in any one year pursuant to Schedule 3, in the absence of agreement between such directors, the director chosen by lots shall retire.
- 20.3 Any person appointed as a director in accordance with regulation 16.3 shall retire as director in accordance with the terms of his or her appointment to the board, provided that he or she shall not act as a director for more than 10 years.

21 **Election of Industry Directors**

- 21.1 Industry Directors are not appointed by resolution of the Company in general meeting. Instead, Industry Directors are elected pursuant to elections conducted from time to time in accordance with the provisions of this Regulation 21 and, where not inconsistent with this Regulation 21, procedures for elections determined by the directors from time to time.
- 21.2 Members who may vote for Industry Directors are as follows:
- 21.2.1 Producer Members and Producer & Retailer Members who belong to Producer Category 1 are eligible to Vote for the election of Producer 1 Directors from the approved list of candidates for such election;

- 21.2.2 Producer Members and Producer & Retailer Members who belong to Producer Category 2 are eligible to Vote for the election of Producer 2 Directors from the approved list of candidates for such election;
- 21.2.3 Producer Members and Producer & Retailer Members who belong to Producer Category 3 are eligible to Vote for the election of Producer 3 Directors from the approved list of nominees for such election;
- 21.2.4 Producer Members and Producer & Retailer Members who belong to Producer Category 4 are eligible to Vote for the election of Producer 4 Directors from the approved list of candidates for such election;
- 21.2.5 Retailer Members and Producer & Retailer Members who belong to Retailer Category 1 are eligible to Vote for the election of Retailer 1 Directors from the approved list of candidates for such election;
- 21.2.6 Retailer Members and Producer & Retailer Members who belong to Retailer Category 2 are eligible to Vote for the election of Retailer 2 Directors from the approved list of candidates for such election; and
- 21.2.7 no other members shall have any no vote in respect of any election of any Industry Director.
- 21.3 Elections for Industry Directors are to be conducted electronically, using the first-past-the-post voting method.
- 21.4 Each Industry Member will have only one vote at each election at which they are eligible to vote.
- 21.5 Notwithstanding that Industry Directors are nominated by and elected by Industry Members, Industry Directors are in no way nominees of or representatives of the member that so nominated them or the members that elected them. In accordance with applicable law, each Industry Director owes their fiduciary duties as directors to the Company and the Company alone.

22 Nomination Procedure for Industry Directors

- 22.1 To be eligible to stand for election as an Industry Director, a person must be nominated as a candidate by an Industry Member which is eligible to vote at the relevant election. An Industry Member may only so nominate a person, where that person is employed by or serves as an officer of the Industry Member or its Affiliate.
- 22.2 Any nomination of a person as a candidate, for election as an Industry Director, must be in writing and must be sent to the secretary not less than one month prior to the date of the relevant election at which the proposed candidate is to stand.
- 22.3 No nominee shall proceed to stand for election until that nominee is first recommended to the directors by the Nominations Committee and approved by the directors as Suitable for

Directorship and, on the authority of the directors, added to the list of eligible candidates who will appear on the ballot for that election.

- 22.4 If after the deadline for nomination there is no eligible candidate for an election (whether because no nominations have been received or any person nominated was not approved as Suitable for Directorship or otherwise), then the directors may instead nominate a person whom they consider: (i) to be Suitable for Directorship; and (ii) to have sufficient experience of the industry and business of those eligible to vote at the relevant election.

23 **Removal of Directors**

In accordance with section 146 of the Act, the Company may by ordinary resolution of Director Members remove a director before the expiration of his period of office notwithstanding any agreement between the Company and that director.

24 **Vacation of Office**

- 24.1 The office of director shall be vacated if:

24.1.1 the director is adjudicated bankrupt or being a bankrupt has not obtained a certificate of discharge in the relevant jurisdiction or has made an arrangement with or for the benefit of the director's creditors;

24.1.2 the director becomes or is deemed to be subject to a disqualification order within the meaning of the Act;

24.1.3 the director resigns his or her office by notice in writing to the Company or if he or she resigns his or her office by spoken declaration at any board meeting and such resignation is accepted by resolution of that meeting, in which case such resignation shall take effect at the conclusion of such meeting;

24.1.4 the health of the director is such that he or she can no longer be reasonably regarded as possessing an adequate decision making capacity;

24.1.5 a declaration of restriction is made in relation to the director;

24.1.6 the director is sentenced to a term of imprisonment following conviction of an indictable offence;

24.1.7 the director is for more than six months absent, without the permission of the directors, from meetings of the directors held during that period; or

24.1.8 the director is requested by his or her co-directors to vacate his or her office in accordance with Regulation 24.2. Any such request shall be made in writing (and may be in counterparts) by letter, email, facsimile or other means or alternatively shall be made orally at a board meeting at which such co-directors are present in person or by alternate, irrespective of whether the director in respect of whom the request is being made is present or not. The vacation of the said director's office as director shall take effect on the date the request is made or, if later, the date stated to be the effective date in that request or, if the request is made orally at a board meeting, with effect

from the termination of the meeting. Notification of any request under this regulation shall be sent by the Company by recorded delivery to the director at his usual residential address as notified to the Company, or if not so notified, then to the address of the director last known to the Company.

24.2 If any director:

24.2.1 is determined by board to have committed a material breach of the director's obligations under any contract of appointment or any policies or procedures of the Company;

24.2.2 is determined by the board to have committed any serious or repeated breach or non-observance of the director's duties to the Company, whether statutory, fiduciary or common-law;

24.2.3 is determined guilty of any fraud or dishonesty or acted in a manner which, in the opinion the directors acting reasonably, brings or is likely to bring the director, the Company or the Scheme into disrepute or is materially adverse to the interests of the Company or the Scheme;

24.2.4 has been convicted of any arrestable criminal offence other than an offence under road traffic legislation in Ireland or elsewhere for which a fine or non-custodial penalty is imposed;

24.2.5 has not complied with any anti-corruption or bribery policy that Company may have in place from time to time or applicable law in respect of anti-corruption or bribery,

24.2.6 if any director is determined by the other directors that such foregoing director should resign,

the directors shall require that the relevant director vacate their office in accordance with Regulation 24.1.8.

24.3 The application of section 148(2) of the Act shall be modified accordingly.

25 Ceasing to be an Employee or Officer of an Industry Member

If an Industry Director (other than the Retailer 1 Director forming part of the Establishment Board) ceases to be an employee or officer of their nominating Industry Member (whether by reason of termination, resignation, retirement, disability or otherwise), they will be deemed to have resigned as a director with effect from the time that they ceased to be so employed or serve as officer, creating a casual vacancy.

26 Casual Vacancy

26.1 If there is a casual vacancy in respect of an Industry Director (whether by reason of their resignation from the board, their vacating their office, their ceasing to be employed by their nominating Industry Member or otherwise), their seat as director shall be filled as follows:

- 26.1.1 The Industry Member who nominated the departing Industry Director for election shall be entitled, within 30 days of the casual vacancy arising, to nominate in writing to the secretary another person to act as a replacement director. Provided that the person so nominated is then recommended by the Nominations Committee and approved by the directors as Suitable for Directorship, the directors shall appoint the nominated replacement as director.
- 26.1.2 If the Industry Member who nominated the retiring Industry Director fails to nominate a suitable replacement within 30 days of the casual vacancy arising, the directors may decide to either: (i) nominate a person whom they consider meets the criteria specified in Regulation 22.4; or (ii) arrange for a by-election to be held in respect of that directorship, which by-election shall be held in the same manner (as nearly as possible) as an election for a director pursuant to Regulation 21.
- 26.2 In the event of a casual vacancy in respect of an Other Director, the directors may from time to time appoint any person, recommended to the directors by the Nominations Committee as Suitable for Directorship, as an Other Director.
- 26.3 Any director who fills the seat of a casual vacancy shall hold that seat until the time that the term of the director they replaced would have otherwise expired and is eligible for re-election only if the director that they replaced would otherwise have been eligible for re-election.

27 Remuneration of Directors

- 27.1 The remuneration of the directors shall be approved by the directors, on recommendation of the remuneration committee and such remuneration shall be deemed to accrue from day to day.
- 27.2 The directors may also be paid all reasonable travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors, or general meetings of the Company, or otherwise in connection with the business of the Company.
- 27.3 Without prejudice to the provisions of regulation 27.2, the directors may exercise all the powers of the Company to purchase and maintain insurance for or for the benefit of any person who is or was:
- 27.3.1 a director, other officer, employee or auditor of the Company, or of any body corporate which is or was the holding company or subsidiary of the Company, or in which the Company or such holding company or subsidiary has or had any interest (whether direct or indirect) or with which the Company or such holding company or subsidiary is or was in any way affiliated or associated; or
- 27.3.2 a trustee of any pension fund in which employees of the Company or any other body corporate referred to in regulation 27.3.1 is or has been interested,

including without limitation insurance against any liability incurred by such person in respect of any act or omission in the actual or purported execution or discharge of his duties or in the

exercise or purported exercise of his powers or otherwise in relation to his duties, powers or offices in relation to the relevant body or fund.

27.4 The application of section 1197 shall be modified accordingly.

PROCEEDINGS OF DIRECTORS

28 General Power of Management and Delegation

28.1 The business of the Company shall be managed by its directors, who may pay all expenses incurred in promoting and registering the Company and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in general meeting, but subject to:

28.1.1 any regulations contained in this Constitution;

28.1.2 the provisions of the Act; and

28.1.3 such directions, not being inconsistent with the foregoing regulations or provisions, as the Company in general meeting may (by special resolution) give.

28.2 Without prejudice to the generality of regulation 28.1 (but subject to a limitation (if any) arising under regulations 28.1.1 to 28.1.3), the directors of the Company may exercise all the powers of the Company:

28.2.1 to borrow money and to mortgage, charge, pledge or otherwise secure its undertaking, property and uncalled capital, or any part thereof; and

28.2.2 to give guarantees, indemnities, counter indemnities and all manners of assurances against loss in respect of, any or all of the debts, obligations and liabilities of any person, firm or corporation, (whether by personal covenant or by mortgaging, charging, pledging or otherwise securing its undertaking, property and uncalled capital, or any part thereof or by any combination of such methods),

notwithstanding that the Company may derive no benefit from the same, and notwithstanding that it may involve the use of the Company's undertaking, property, and uncalled capital for the benefit of one or more directors of the Company or of any other person.

28.3 The directors may delegate any of their powers to such person or persons as they think fit, including committees. Any such committee shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

29 Meetings of Directors and Committees

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

29.2 Questions arising at any such meeting shall be decided by a majority of votes and where there is an equality of votes, the chairperson shall have a second or casting vote.

- 29.3 A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.
- 29.4 All directors shall be entitled to reasonable notice of any meeting of the directors but it shall not be necessary to give notice of a meeting of directors to any director who, being resident in the State, is for the time being absent from the State.
- 29.5 The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be two.
- 29.6 The continuing directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of directors, the continuing directors or director may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company but for no other purpose.
- 29.7 The directors may elect a chairperson of their meetings and determine the period for which he or she is to hold office, but if no such chairperson is elected, or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the directors present may choose one of their number to be chairperson of the meeting.
- 29.8 The directors may establish one or more committees consisting in whole or in part of members of the board of directors.
- 29.9 A committee established under regulation 29.8 may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding it, the members of the committee present may choose one of their number to be chairperson of the meeting.
- 29.10 A committee may meet and adjourn meetings as it thinks proper.
- 29.11 Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present, and where there is an equality of votes, the chairperson shall have a second or casting vote.
- 29.12 The application of section 160 of the Act shall be modified accordingly.

30 Written Resolutions of Directors

- 30.1 A resolution in writing signed by all the directors of the Company, or by all the members of a committee of them, and who are for the time being entitled to receive notice of a meeting of the directors or, as the case may be, of such a committee, shall be as valid as if it had been passed at a meeting of the directors or such a committee duly convened and held. A resolution executed by an alternate director need not also be signed by his appointer.
- 30.2 A resolution referred to in regulation 30.1 may be signed by electronic signature, advanced electronic signature or otherwise as approved by the directors.

30.3 Subject to regulation 30.4, where one or more of the directors (other than a majority of them) would not, by reason of:

- (a) the Act or any other enactment;
- (b) the Constitution; or
- (c) a rule of law,

be permitted to vote on a resolution such as is referred to in regulation 30.1, if it were sought to pass the resolution at a meeting of the directors duly convened and held, then such a resolution, notwithstanding anything in regulation 30.1, shall be valid for the purposes of that regulation if the resolution is signed by those of the directors who would have been permitted to vote on it had it been sought to pass it at such a meeting.

30.4 In a case falling within regulation 30.3, the resolution shall state the name of each director who did not sign it and the basis on which he or she did not sign it.

30.5 For the avoidance of doubt, nothing in the preceding regulations dealing with a resolution that is signed by other than all of the directors shall be read as making available, in the case of an equality of votes, a second or casting vote to the one of their number who would, or might have been, if a meeting had been held to transact the business concerned, chairperson of that meeting.

30.6 The resolution referred to in regulation 30.1 may consist of several documents in like form each signed by one or more directors and for all purposes shall take effect from the time that it is signed by the last director.

30.7 The application of section 161 of the Act shall be modified accordingly.

31 **Meetings of Directors by Conference**

31.1 A meeting of the directors or of a committee of them may consist of a conference between some or all of the directors or, as the case may be, members of the committee who are not all in one place, but each of whom is able (directly or by means of telephonic, video or other electronic communication) to speak to each of the others and to be heard by each of the others and:

31.1.1 a director or member of a committee taking part in such a conference shall be deemed to be present in person at the meeting and shall be entitled to vote and be counted in a quorum accordingly; and

31.1.2 such a meeting shall be deemed to take place in such location as the directors, or members of the committee, decide and failing that where the chairperson of the meeting is located.

31.2 The application of section 161 of the Act shall be modified accordingly.

32 **Duty of Director to Disclose his or her Interest in Contracts made by Company**

- 32.1 In accordance with section 231 of the Act, it shall be the duty of a director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company, to declare the nature of his or her interest to the Company.
- 32.2 A director may not vote in respect of any contract, appointment or arrangement in which he or she is interested or any matter arising therefrom and he or she shall not be counted in the quorum present at the meeting.

33 **Alternate Directors**

- 33.1 Any director (the “**appointer**”) of the Company may from time to time appoint any other director of it or any other person to be an alternate director (the “**appointee**”) as respects him or her.
- 33.2 The appointee may act as alternate director to represent more than one director, and an alternate director shall be entitled at meetings of the directors, or any committee of the directors, to one vote for every director whom he represents (and who is not present) in addition to his own vote (if any) as a director, but he shall count as only one for the purpose of determining whether a quorum is present at the meeting.
- 33.3 The appointee, while he or she holds office as an alternate director, shall be entitled:
- (a) to notice of meetings of the directors;
 - (b) to attend at such meetings as a director; and
 - (c) in place of the appointer, to vote at such meetings as a director,
- but shall not be entitled to be remunerated otherwise than out of the remuneration of the appointer.
- 33.4 Any appointment under this section shall be effected by notice in writing given by the appointer to the Company.
- 33.5 Any appointment so made may be revoked at any time by the appointer or by a majority of the other directors or by the Company in general meeting.
- 33.6 Revocation of such an appointment by the appointer shall be effected by notice in writing given by the appointer to the Company.
- 33.7 An appointee shall cease to be an alternate director:
- (a) if his appointer ceases to be a director; or
 - (b) on the happening of any event which, if he were a director, would cause him to vacate his office as director; or
 - (c) if he resigns his office by notice in writing to the Company.

33.8 The application of section 165 of the Act shall be modified accordingly.

34 Minutes of Proceedings of Directors

34.1 The Company shall cause minutes to be entered in books kept for that purpose of:

- (a) all appointments of officers made by its directors;
- (b) the names of the directors present at each meeting of its directors and of any committee of the directors; and
- (c) all resolutions and proceedings at all meetings of its directors and of committees of directors.

GENERAL MEETINGS AND RESOLUTIONS

35 Annual General Meeting

35.1 Subject to regulation 35.2 and 35.4, the Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it and not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next.

35.2 So long as the Company holds its first annual general meeting within 18 months after the date of its incorporation, it need not hold it in the year of its incorporation or in the following year.

35.3 The financial statements and report of the directors and the statutory auditors for a financial year shall be laid before a general meeting of the Company not later than nine months after the financial year end date.

35.4 Where the Company is a single-member company, the Company need not hold an annual general meeting in any year where the sole member entitled (at the date of the written resolution referred to in this regulation) to attend and vote at such annual general meeting signs before the latest date for the holding of that meeting a written resolution:

35.4.1 acknowledging receipt of the financial statements that would have been laid before that meeting;

35.4.2 resolving all such matters as would have been resolved at that meeting; and

35.4.3 confirming no change is proposed in the appointment of the person (if any) who, at the date of the resolution, stands appointed as statutory auditor of the Company.

36 Location and Means for Holding General Meetings

36.1 An annual general meeting of the Company or an extraordinary general meeting of it may be held inside or outside of the State.

36.2 If the Company holds its annual general meeting or any extraordinary general meeting outside of the State then, unless all of the members entitled to attend and vote at such meeting

consent in writing to its being held outside of the State, the Company shall make, at the Company's expense, all necessary arrangements to ensure that members can by technological means participate in any such meeting without leaving the State.

- 36.3 A meeting referred to in the foregoing regulation may be held in two or more venues (whether inside or outside of the State) at the same time using any technology that provides members, as a whole, with a reasonable opportunity to participate.

37 Extraordinary General Meetings

- 37.1 The directors of the Company may, whenever they think fit, convene an extraordinary general meeting. If, at any time, there are not sufficient directors capable of acting to form a quorum, any director or any member may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

- 37.2 The directors shall, on the requisition of one or more members holding, or together holding, at the date of the deposit of the requisition, not less than 10 per cent of the total voting rights of all the members having, at the date of the deposit, the right to vote at general meetings of the Company, forthwith proceed duly to convene an extraordinary general meeting of the Company.

- 37.3 The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists.

- 37.4 If the directors do not within 21 days after the date of the deposit of the requisition proceed to convene a meeting to be held within two months after that date (the "**requisition date**"), the requisitionists, or any of them representing more than 50 per cent of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months after the requisition date.

- 37.5 Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors to convene a meeting shall be repaid to the requisitionists by the Company and any sum so repaid shall be retained by the Company out of any sums due or to become due from the Company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

- 37.6 For the purposes of regulations 37.2 to 37.5, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice of it as is required by section 181 of the Act.

- 37.7 A meeting convened under regulation 37.4 shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors.

38 Persons entitled to Notice of General Meetings

- 38.1 Notice of every general meeting of the Company shall be given to:

38.1.1 every member [entitled to notice pursuant to Regulation 7 \(and to no other member\)](#);
and

38.1.2 the directors and the secretary of the Company.

38.2 Unless the Company is entitled to and has availed itself of the audit exemption under sections 360 or 365 of the Act (and, where relevant, section 399 has been complied with in that regard), the statutory auditors of the Company shall be entitled to:

38.2.1 attend any general meeting of the Company;

38.2.2 receive all notices of, and other communications relating to, any general meeting which any member of the Company is entitled to receive; and

38.2.3 be heard at any general meeting which they attend on any part of the business of the meeting which concerns them as statutory auditors.

39 **Notice of General Meetings**

39.1 A meeting of the Company, other than an adjourned meeting, shall be called:

39.1.1 in the case of the annual general meeting or an extraordinary general meeting for the passing of a special resolution, by not less than 21 days' notice;

39.1.2 in the case of any other extraordinary general meeting, by not less than seven days' notice.

39.2 A meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in regulation 39.1, be deemed to have been duly called if it is so agreed by:

39.2.1 all the members entitled to attend and vote at the meeting; and

39.2.2 unless no statutory auditors of the Company stand appointed in consequence of the Company availing itself of the audit exemption under sections 360 or 365 of the Act (and, where relevant, section 399 has been complied with in that regard), the statutory auditors of the Company.

39.3 A resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days' notice has been given if it is so agreed by a majority in number of the members having the right to attend and vote at any such meeting, being a majority together representing not less than 90 per cent of the total voting rights at that meeting of all the members.

39.4 Where notice of a meeting is given by posting it by ordinary prepaid post to the registered address of a member, then, for the purposes of any issue as to whether the correct period of notice for that meeting has been given, the giving of the notice shall be deemed to have been effected on the expiration of 24 hours following posting.

39.5 In determining whether the correct period of notice has been given by a notice of a meeting, neither the day on which the notice is served nor the day of the meeting for which it is given shall be counted.

39.6 The notice of a meeting shall specify:

- (a) the place, the date and the time of the meeting;
- (b) the general nature of the business to be transacted at the meeting;
- (c) in the case of a proposed special resolution, the text or substance of that proposed special resolution; and
- (d) with reasonable prominence a statement that:
 - (i) a member entitled to attend and vote is entitled to appoint a proxy using the form set out in section 184 of the Act to attend, speak and vote instead of him or her;
 - (ii) a proxy need not be a member; and
 - (iii) the time by which the proxy must be received at the Company's registered office or some other place within the State as is specified in the statement for that purpose.

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

40 **Quorum**

40.1 No business shall be transacted at any general meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business.

40.2 Two Director Members present in person or by proxy at a general meeting of it shall be a quorum.

40.3 In the case of a single-member company, one member of the Company present in person or by proxy at a general meeting shall be a quorum.

40.4 If within 15 minutes after the time appointed for a general meeting a quorum is not present, then:

40.4.1 where the meeting has been convened upon the requisition of members, the meeting shall be dissolved;

40.4.2 in any other case:

- (a) the meeting shall stand adjourned to the same day in the next week, at the same time and place or to such other day and at such other time and place as the directors may determine; and
- (b) if at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the members present shall be a quorum.

41 Proxies

- 41.1 Subject to regulation 41.3, any member of the Company entitled to attend and vote at a meeting of the Company shall be entitled to appoint another person (whether a member or not) as his or her proxy to attend and vote instead of him or her.
- 41.2 A proxy so appointed shall have the same right as the member to speak at the meeting and to vote on a show of hands and on a poll.
- 41.3 A member of the Company shall not be entitled to appoint more than one proxy to attend on the same occasion.
- 41.4 The instrument appointing a proxy (the “**instrument of proxy**”) shall be in writing:
- (a) under the hand of the appointer or of his or her attorney duly authorised in writing; or
 - (b) if the appointer is a body corporate, either under seal of the body corporate or under the hand of an officer or attorney of it duly authorised in writing.
- 41.5 The instrument of proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company concerned or at such other place within the State as is specified for that purpose in the notice convening the meeting, and shall be so deposited not later than the ‘appointed time’ as defined in regulation 41.6.
- 41.6 The appointed time is:
- (a) immediately before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (b) in the case of a poll, immediately before the time appointed for the taking of the poll,
- and the application of section 183(6) of the Act shall be modified accordingly.
- 41.7 The depositing of the instrument of proxy referred to in regulation 41.5 may, rather than it being effected by sending or delivering the instrument, be effected by communicating the instrument to the Company by electronic means, and this regulation likewise applies to the depositing of anything else referred to in regulation 41.5.
- 41.8 If regulation 41.5 or regulation 41.6 is not complied with, the instrument of proxy shall not be treated as valid.

41.9 Subject to regulation 41.10, a vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the appointer or revocation of the proxy or of the authority under which the proxy was executed.

41.10 Regulation 41.9 does not apply if notice in writing of the occurrence of one of the events mentioned in that regulation is received by the Company concerned at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

42 Form of Proxy

42.1 An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit:

Deposit Return Scheme Ireland Company Limited by Guarantee

(the "Company")

Appointment of Proxy for [EGM / AGM]

[●] (the "Member") of [●], being a member of the Company hereby appoint[s]:

<p><i>Insert name of proxy</i></p> <p>Name:</p> <p>Address:</p>

or failing him or her,

<p><i>Insert name of alternative proxy</i></p> <p>Name:</p> <p>Address:</p>

as the proxy of the Member to attend, speak, vote and to demand or join in demanding a poll for the Member on behalf of the Member at the extraordinary general meeting of the Company to be held on [●] 20[●] and at any adjournment of the meeting.

The proxy is to vote as follows:

<i>Voting instructions to Proxy</i>			
<i>(choice to be marked with an "x")</i>			
<i>Number or description of resolution</i>	<i>In favour</i>	<i>Abstain</i>	<i>Against</i>
<i>Unless otherwise instructed the proxy will vote as he or she thinks fit.</i>			

Signature of Member:

Dated:

43 Representation of Bodies Corporate at Meetings of Companies

- 43.1 A body corporate may, if it is a member of the Company, by resolution of its directors or other governing body authorise such person (in this regulation referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of the Company or at any meeting of any class of members of the Company.
- 43.2 A body corporate may, if it is a creditor (including a holder of debentures) of the Company, by resolution of its directors or other governing body authorise such person (in this regulation also referred to as an “authorised person”) as it thinks fit to act as its representative at any meeting of any creditors of the Company held in pursuance of the Act or the provisions contained in any debenture or trust deed, as the case may be.
- 43.3 An authorised person shall be entitled to exercise the same powers on behalf of the body corporate which he or she represents as that body corporate could exercise if it were an individual member of the Company, creditor or holder of debentures of the Company.
- 43.4 The chairperson of a meeting may require a person claiming to be an authorised person within the meaning of this section to produce such evidence of the person’s authority as such as the chairperson may reasonably specify and, if such evidence is not produced, the chairperson may exclude such person from the meeting.

44 Proceedings at Meetings

- 44.1 The chairperson, if any, of the board of directors shall preside as chairperson at every general meeting of the Company, or if there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairperson of the meeting.
- 44.2 If at any meeting no director is willing to act as chairperson or if no director is present within 15 minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of the members present and entitled to vote to be chairperson of the meeting.
- 44.3 The chairperson may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.
- 44.4 No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 44.5 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting but, subject to that, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

- 44.6 Unless a poll is demanded in accordance with section 189 of the Act, at any general meeting:
- (a) a resolution put to the vote of the meeting shall be decided on a show of hands; and
 - (b) a declaration by the chairperson 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 shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 44.7 Where there is an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote in addition to any other vote he or she may have.
- 44.8 The application of section 187 of the Act shall be modified accordingly.

45 **Votes of Members**

- 45.1 Where a matter is being decided (whether on a show of hands or on a poll), every member eligible to vote on such matter, present in person and every proxy shall have one vote, but so that no individual member shall have more than one vote.
- 45.2 Each of the following:
- (a) a member of unsound mind;
 - (b) a member who has made an enduring power of attorney;
 - (c) a member in respect of whom an order has been made by any court having jurisdiction in cases of unsound mind;
- may vote, whether on a show of hands or on a poll, by his or her committee, donee of a registered enduring power of attorney, receiver, guardian or other person appointed by the foregoing court.
- 45.3 Any such committee, donee of an enduring power of attorney, receiver, guardian, or other person may speak and vote by proxy, whether on a show of hands or on a poll.
- 45.4 No member shall be entitled to vote at any general meeting of the Company unless all moneys immediately payable by him or her to the Company have been paid.
- 45.5 No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.
- 45.6 Any such objection made in due time shall be referred to the chairperson of the meeting, whose decision shall be final and conclusive.
- 45.7 The application of section 188 of the Act shall be modified accordingly.

46 **Unanimous Written Resolutions**

- 46.1 A resolution in writing signed by all the members of the Company for the time being entitled to attend and vote on such resolution at a general meeting (or being bodies corporate by their duly appointed representatives) shall be as valid and effective for all purposes as if the resolution had been passed at a general meeting of the Company duly convened and held and if described as a special resolution shall be deemed to be a special resolution.
- 46.2 A resolution passed in accordance with regulation 46.1 shall be deemed to have been passed at a meeting held on the date on which it was signed by the last member to sign, and, where the resolution states a date as being the date of his or her signature thereof by any member, the statement shall be prima facie evidence that it was signed by him or her on that date.
- 46.3 If a resolution passed in accordance with regulation 46.1 is not contemporaneously signed, the Company shall notify the members, within 21 days after the date of delivery to it of the documents referred to in regulation 46.4, of the fact that the resolution has been passed.
- 46.4 The signatories of a resolution passed in accordance with regulation 46.1 shall, within 14 days after the date of its passing, procure delivery to the Company of the documents constituting the written resolution; without prejudice to the use of the other means of delivery generally permitted by the Act, such delivery may be effected by electronic mail or the use of a facsimile machine.
- 46.5 This regulation does not apply to a resolution to remove a director or a resolution to effect the removal of a statutory auditor from office, or so as not to continue him or her in office.
- 46.6 A resolution referred to in regulation 46.1 may be signed by electronic signature or advanced electronic signature.

47 **Single-Member Companies — Absence of need to hold General Meetings etc**

- 47.1 All the powers exercisable by the Company in general meeting under this Constitution or the Act or otherwise shall be exercisable, in the case of a single-member company, by the sole member without the need to hold a general meeting for that purpose.
- 47.2 Subject to regulation 47.3, any provision of this Constitution and the Act which enables or requires any matter to be done or to be decided by the Company in general meeting, or requires any matter to be decided by a resolution of the Company, shall be deemed to be satisfied, in the case of a single-member company, by a decision of the member which is drawn up in writing and notified to the Company in accordance with this regulation.
- 47.3 Regulation 47.1 shall not empower the sole member of a single-member company to exercise the powers to remove a statutory auditor from, or not continue a statutory auditor in, office without holding the requisite meeting provided for in the Act.

48 **Minutes of Proceedings of Meetings of the Company**

The Company shall, as soon as may be after their holding or passing, cause minutes of all proceedings of general meetings of it, and the terms of all resolutions of it, to be entered in

books kept for that purpose. All such books kept by the Company in pursuance of this regulation shall be kept at the same place.

49 Service of Notices on Members

49.1 Any notice to be given, served, sent or delivered pursuant to this Constitution (save where it is to be given, served, sent or delivered by electronic means) shall be in writing.

49.2 A notice or document to be given, served, sent or delivered in pursuance of this Constitution may be given to, served on, sent or delivered to any member by the Company:

- (a) by hand delivering it to the member or his authorised agent or where the member is a body corporate, to any officer of that body corporate;
- (b) by leaving it at the registered address of the member;
- (c) by sending it by post in a pre-paid letter addressed to the member at the registered address of the member;
- (d) by sending it by courier in a pre-paid letter addressed to the member at the registered address of the member; or
- (e) by sending it by means of electronic mail or facsimile or other means of electronic communication approved by the directors to the address of the member notified to the Company by the member for such purpose (or if not so notified, then to the address of the member last known to the Company).

49.3 Any notice served, given, sent or delivered in accordance with the foregoing regulations shall be deemed, in the absence of any agreement to the contrary between the Company (or, as the case may be, the officer of it) and the member, to have been served, given sent or delivered:

- (a) in the case of hand delivery, at the time of delivery (or, if delivery is refused, when tendered);
- (b) in the case of it being left, at the time that it is left;
- (c) in the case of its being posted or couriered on any day other than a Friday, Saturday or Sunday, 24 hours after despatch and in the case of its being posted or couriered:
 - (i) on a Friday – 72 hours after despatch; or
 - (ii) on a Saturday or Sunday – 48 hours after despatch;
- (d) in the case of electronic means being used in relation to it, 12 hours after despatch.

49.4 Every member shall be bound by a notice served, given, sent or delivered as aforesaid notwithstanding that the Company may have notice of the death, insanity, bankruptcy, liquidation or disability of such member.

49.5 Notwithstanding anything contained in these regulations, the Company shall not be obliged to take account of or make any investigations as to the existence of any suspension or

curtailment of postal services within or in relation to all or any part of any jurisdiction or other area other than Ireland.

- 49.6 The signature (whether electronic signature, advanced electronic signature or otherwise) to any notice to be given by the Company may be written (in electronic form or otherwise) or printed.
- 49.7 In this regulation “registered address” in relation to a member, means the address of the member as entered in the register of members.
- 49.8 Section 218 of the Act does not apply.

LIABILITY OF OFFICERS

50 Fiduciary Duties of Directors

For the purposes of section 228(1)(d) of the Act, a director is expressly permitted to use for his or her own, or anyone else’s benefit, any of the Company’s property (including computers, telephones, vehicles and accommodation) where such use is approved by the directors or by a person authorised by the directors or where such use is in the course of the discharge of the director’s duties, responsibilities or employment obligations.

51 Indemnity for Officers

- 51.1 Subject to the provisions of the Act, the Company may indemnify any officer of the Company against any liability incurred by him or her in defending proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted, or in connection with any proceedings or application referred to in, or under, section 233 or 234 of the Act in which relief is granted to him or her by the court.
- 51.2 Every officer of the Company shall be entitled to be indemnified out of the assets of the Company against all losses or liabilities which he or she may sustain or incur in or about the execution of the duties of his or her office or otherwise in relation thereto and no officer shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of his or her office or in relation thereto. This regulation shall only have effect in so far as its provisions are not void under section 235 of the Act.

Schedule 1 Membership Criteria

1 Interpretation

1.1 In this Schedule 1:

1.1.1 “**alcoholic**” means any fermented liquor, such as wine, beer, or distilled spirits that contains ethyl alcohol or ethanol (CH₃CH₂OH);

1.1.2 “**beverage**” means a liquid intended for human consumption by drinking, it does not include milk or other dairy-based products;

1.1.3 “**brand**” means a name, term, design, symbol, or any other feature that identifies one seller's good or service as distinct from those of other sellers;

1.1.4 “**branded**”, when referring to a product, means a product manufactured, marketed or sold under a brand, whether or not a registered trademark;

1.1.5 “**in-scope beverage products**” means:

(a) bottles which are manufactured from polyethylene terephthalate (PET) with a capacity from 150 millilitres to 3 litres and their component parts which are used and sealed for the sale of a beverage, and for which a deposit is or will be payable pursuant to the Scheme; or

(b) containers which are manufactured from aluminium or steel with a capacity from 150 millilitres to 3 litres and their component parts which are used and sealed for the sale of a beverage, and for which a deposit is or will be payable pursuant to the Scheme,

together with its contents when sold;

1.1.6 “**non-alcoholic**” means any beverage that does not fall into the alcoholic class, excluding milk or other dairy-based products;

1.1.7 “**own-label**” means, in relation to a product, a product that is manufactured for a retailer by a third-party but is sold under the retailer's brand, of which brand the retailer retains ownership, including by means of control of the product and its packaging; and

1.2 References in this Schedule 1 to in-scope beverage products being placed on the market, shall mean the first sale or supply of an in-scope beverage product for the purpose of trade or otherwise in the course of business in the State (and analogous terms shall be construed accordingly).

2 Classes of Members

2.1 Producer Members

To be eligible to be a Producer Member, a person must:

- 2.1.1 irrespective of the selling technique used, be a person who is first to place in-scope beverage products on the market in the State;
- 2.1.2 fall into one of the categories specified in paragraph 3 of this Schedule 1; and
- 2.1.3 not meet the criteria for any other Class of Member [\(other than the criteria for a Distributor Member\)](#).

2.2 **Retailer Member**

To be eligible to be a Retailer Member, a person must, for the purpose of trade or otherwise in the course of business, sell or otherwise supply in-scope beverage products to a final consumer and must not meet the criteria for any other Class of Member [\(other than the criteria for a Distributor Member\)](#).

2.3 **Producer & Retailer Member**

To be eligible to be a Producer & Retailer Member, a person must meet the criteria for both a Producer Member and a Retailer Member and must not meet the criteria for any other Class of Member [\(other than the criteria for a Distributor Member\)](#).

2.4 **Return Point Operator Member**

To be eligible to be a Return Point Operator Member, a person must operate a facility for taking back in-scope beverage products, provide storage for the returned in-scope beverage products and reimburse the deposit paid for the in-scope beverage products to a consumer.

2.5 **Distributor Member**

2.5.1 **To be eligible to be a Distributor Member, a person must:**

- (a) [sell or supply an in-scope beverage product by wholesale; and](#)
- (b) [not meet the criteria for any other Class of Member.](#)

2.5.2 **For the avoidance of doubt, if a person meets the criteria to be a:**

- (a) [Distributor Member and a Producer Member, the person shall be deemed to be eligible to be a Producer Member only;](#)
- (b) [Distributor Member and a Producer & Retailer Member, the person shall be deemed to be eligible to be a Producer & Retailer Member only; and](#)
- (c) [Distributor Member and a Retailer Member, the person shall be deemed to be eligible to be a Retailer Member only.](#)

3 Categories of Producer Member

To constitute a Producer Member, a person must fall into one of the following categories:

- (a) **Producer 1 – branded non-alcohol:** a person who places on the market in the State:
 - (i) more than 10,000,000 (ten million) units of branded non-alcoholic in-scope beverage products per year, where those units constitute the majority of units of in-scope beverage products placed on the market in the State by that person; and
 - (ii) no units of own-label in-scope beverage products.
- (b) **Producer 2 – branded alcohol:** a person who places on the market in the State:
 - (i) more than 10,000,000 (ten million) units of branded alcoholic in-scope beverage products per year, where those units constitute the majority of in-scope beverage products placed on the market in the State by that person; and
 - (ii) no units of own-label in-scope beverage products.
- (c) **Producer 3 – own-label combined:** a person who places on the market in the State own-label in-scope beverage products, regardless of whether those in-scope beverage products are alcoholic or non-alcoholic.
- (d) **Producer 4 – small branded combined:** a person who places on the market in the State:
 - (i) less than 10,000,000 (ten million) units of branded in-scope beverage products per year, regardless of whether those products are alcoholic or non-alcoholic; and
 - (ii) no units of own-label in-scope beverage products.

4 Categories of Retailer Member

To constitute a Retailer Member, a person must fall into one of the following categories:

- (a) **Retailer 1 – small retailer:** means any person who for the purpose of trade or otherwise in the course of business, sells or otherwise supplies in-scope beverage products to a final consumer and, in relation to its financial year, fulfils two or more of the following conditions:
 - (i) the amount of the turnover of the person does not exceed €8.8 million;
 - (ii) the balance sheet total of the person does not exceed €4.4 million;

- (iii) the average number of employees of the person does not exceed 50;
 - (iv) the person provides customers with less than 100m² of in-store retail space in which goods are on display for sale to the public.
- (b) **Retailer 2 – large retailer:** means any person who for the purpose of trade or otherwise in the course of business, sells or otherwise supplies in-scope beverage products to a final consumer and does not constitute a small retailer within the meaning of clause (a) above.

**Schedule 2
Establishment Board**

David Kelly	Other Director – INED
Noreen O'Kelly	Other Director – INED
Tony Keohane	Other Director – non-executive chairperson
Kevin Donnelly	Producer 1 Director
Thomas Burke	Producer 1 Director
Avril Collins	Producer 2 Director
Liam Reid	Producer 2 Director
Rosemary Garth	Producer 3 Director
Joseph Owens	Producer 4 Director
Tara Buckley	Retailer 1 Director
John Curran	Retailer 2 Director

**Schedule 3
Retirement Schedule**

Part A

- (a) On a date during 2025 to be determined by the directors, the following three directors of the Establishment Board shall retire from their directorships of the Company, being:
- (i) one Producer 1 Director or one Producer 2 Director shall retire (as agreed between the relevant directors or, failing agreement, as decided by lots);
 - (ii) the Producer 3 Director or the Producer 4 Director shall retire (as agreed between the relevant directors or, failing agreement, as decided by lots); and
 - (iii) one INED shall retire,
- (such retiring directors, and each replacement thereof, being together referred to in this Schedule 3 as the "**Year 1 Directors**").
- (b) On a date during 2026 to be determined by the directors, the following four directors of the Establishment Board shall retire from their directorships of the Company, being:
- (i) if, pursuant to clause (a)(i) of this Part A of Schedule 3:
 - (1) a Producer 1 Director retired in 2025, a Producer 2 Director shall retire; or
 - (2) a Producer 2 Director retired in 2025, a Producer 1 Director shall retire;
 - (ii) if, pursuant to clause (a)(ii) of this Part A of Schedule 3:
 - (1) the Producer 3 Director retired in 2025, the Producer 4 Director shall retire; and
 - (2) the Producer 4 Director retired in 2025, the Producer 3 Director shall retire,
 - (iii) the Retailer 1 Director or the Retailer 2 Director shall retire (as agreed between the relevant directors or, failing agreement, as decided by lots); and
 - (iv) the remaining INED who formed part of the Establishment Board shall retire,
- (such retiring directors, and each replacement thereof, being together referred to in this Schedule 3 as the "**Year 2 Directors**").
- (c) On a date during 2027 to be determined by the directors, each of the following four directors of the Establishment Board shall retire from their directorships of the Company, being:
- (i) the remaining Producer 1 Director who formed part of the Establishment Board shall retire;

- (ii) the remaining Producer 2 Director who formed part of the Establishment Board shall retire;
- (iii) the remaining Retailer Director who formed part of the Establishment shall retire; and
- (iv) the non-executive chairperson shall retire,

(such retiring directors, and each replacement thereof, being together referred to in this Schedule 3 as the **Year 3 Directors**").

Part B

- (a) On a date during 2029 to be determined by the directors and on the fourth anniversary of any such date and every fourth anniversary thereafter, the Year 1 Directors shall retire from office.
- (b) On a date during 2030 to be determined by the directors and on the fourth anniversary of any such date and every fourth anniversary thereafter, the Year 2 Directors shall retire from office.
- (c) On a date during 2031 to be determined by the directors and on the fourth anniversary of any such date and every fourth anniversary thereafter, the Year 3 Directors shall retire from office.

Summary report:	
Litera Compare for Word 11.5.0.74 Document comparison done on 19/08/2024 20:23:33	
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Intelligent Table Comparison: Active	
Original DMS: iw://imanager.matheson.com/MOPDUBLIN/61862713/1	
Modified DMS: iw://imanager.matheson.com/MOPDUBLIN/61862713/7	
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Delete	54
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	132