

Constitution



Bega Dairy and Drinks Pty Ltd, ACN 004 486 631 ("Company")

A proprietary company limited by shares

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Constitution

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under article 6.4.

Board means the board of directors of the Company.

Company means Bega Dairy and Drinks Pty Ltd, ACN 004 486 631 as that name may be changed from time to time.

Constitution means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

Corporations Act means the Corporations Act 2001 (Cwlth).

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

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

Holding Company means the sole Member of the Company, as that name may be changed from time to time.

Member means a person entered in the Register as a holder of shares in the capital of the Company.

Register means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

Secretary means a person appointed under article 7 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a reference to a document including this Constitution includes any variation or replacement of it;
- (d) the singular includes the plural and vice versa;
- (e) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (f) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting, a Member or the Holding Company may be exercised at any time and from time to time;
- (g) a reference to an amount paid on a share includes an amount credited as paid on that share; and
- (h) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) "section" means a section of the Corporations Act.

1.4 Replaceable rules not to apply

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

2. SHARE CAPITAL AND VARIATION OF RIGHTS

2.1 Directors to issue shares

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and cancel shares in the Company;
 - (b) grant options over unissued shares in the Company; and
 - (c) settle the manner in which fractions of a share, however arising, are to be dealt with,
- subject to the Corporations Act and any special rights conferred on the holders of any shares or class of shares.

2.2 Preference shares

The Company may not issue preference shares (including redeemable preference shares) and issued shares may not be converted into preference shares unless the rights attached to the preference shares have been approved by special resolution.

2.3 Conversion of preference shares

Subject to compliance with the Corporations Act and other applicable laws, the conversion of any preference share issued in compliance with article 2.2 will not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but will have the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an ordinary share.

2.4 Variation of rights attached to shares

Subject to this Constitution and the terms on which any shares in the Company are issued, the rights attaching to shares in a class of shares may only be varied or cancelled by a special resolution of the Company.

2.5 No variation

The rights attaching to shares in a class of shares will not be taken to be varied by:

- (a) the issue of further shares of that class; or
 - (b) the issue of any shares of any other class; or
 - (c) the conversion of shares or other securities to new shares or securities,
- which rank equally with, or in priority to, the shares in the relevant class of shares, unless expressly provided by their respective terms of issue or the Corporations Act.

3. TRANSFER OF SHARES

3.1 Forms of instrument of transfer

Subject to this Constitution, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

3.2 Effect of registration

A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

3.3 Directors' powers to refuse to register

The Directors may refuse to register a transfer of shares, without having to give any reason.

3.4 Transfer to or by a mortgagee

The Directors may not refuse to register a transfer of shares under article 3.3 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person) ("Mortgagee") which is given by a Member over their shares in the Company ("Share Mortgage"), or is pursuant to an exercise by a Mortgagee of rights in relation to a Share Mortgage.

In any such case, the Directors must register the transferee as a Member. The Directors may request and rely on a written statement of the Mortgagee certifying that the transfer is pursuant to an exercise of rights under a Share Mortgage.

4. THE DIRECTORS

4.1 Number of Directors

The Company must have at least one Director.

4.2 Change of number of Directors

The Holding Company may by notice in writing to the Company, or the Directors may by resolution, increase or reduce the number of Directors.

4.3 Appointment of Director

The Holding Company may by notice in writing to the Company appoint a person to be a Director (including a managing or executive director).

4.4 Removal of Director

The Holding Company may by notice in writing to the Company remove a Director (including a managing or executive director) from office as a Director.

Whether or not the appointment of a managing or executive director was expressed to be for a specified term, the appointment of a managing or executive director terminates if the managing or executive director ceases to be employed by the Company or a related body corporate.

4.5 Casual vacancy or additional Director

The Holding Company may by notice in writing to the Company, or the Directors may by resolution, appoint a person to be a Director, either to fill a casual vacancy or as an additional Director, provided that the total number of Directors does not exceed any maximum number, determined in accordance with articles 4.1 and 4.2.

4.6 Remuneration and expenses of Directors

The Directors may be remunerated by the Company for their services as Directors as determined by the Holding Company. The remuneration is taken to accrue from day to day.

4.7 Director's interests

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

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;

- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to each related body corporate of the Company.

4.8 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (b) resigns from the office by notice in writing to the Company.

5. POWERS AND DUTIES OF DIRECTORS

5.1 Directors to manage Company

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

5.2 Specific powers of Directors

Without limiting the generality of article 5.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

5.3 Interests of holding company

The Directors are authorised to act in the best interests of any company of which the Company is a wholly owned subsidiary in the circumstances contemplated by section 187 of the Corporations Act.

6. PROCEEDINGS OF DIRECTORS

6.1 Directors' meetings

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

6.2 Questions decided by majority

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

6.3 Alternate Director or proxy and voting

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

6.4 Appointment of Alternate Director

Subject to the Corporations Act, a Director may appoint a person approved by the Holding Company, or a majority of other Directors, to be an Alternate Director in the Director's place during any period as the Director thinks fit.

6.5 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

6.6 Alternate Director's powers

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

6.7 Alternate Director responsible for own acts and defaults

While acting as a Director, an Alternate Director:

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

6.8 Alternate Director and remuneration

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 0.

6.9 Termination of appointment of Alternate Director

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

6.10 Alternate Director and number of Directors

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

6.11 Director attending and voting by proxy

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

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

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

6.12 Quorum for Directors' meeting

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

- (a) where there is only one Director, that Director; and
- (b) where there is more than one Director, two Directors, unless otherwise determined by the Directors.

6.13 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 4.1, the continuing director may act in an emergency.

6.14 Circulating resolutions

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

6.15 Validity of acts of Directors

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

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
 - (b) a person acting as a Director was disqualified or was not entitled to vote,
- as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

7. SECRETARY

7.1 Appointment of Secretary

The Company may, but need not, have one or more Secretaries who are to be appointed and may be suspended or removed by the Directors.

7.2 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

8. DIVIDENDS AND RESERVES

8.1 Payment of dividend

Subject to the Corporations Act, this Constitution and the terms of issue or rights of any shares with special rights to dividends, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

8.2 Reserves and profits carried forward

Subject to the Corporations Act, the Directors may:

- (a) before paying any dividend, set aside such sums as they think proper as a reserve, to be applied, at the discretion of the Directors, for any purpose for which such sums may be properly applied; and
- (b) carry forward so much of the profits or other sums remaining as they consider ought not to be distributed as dividends without transferring those profits or other sums to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

8.3 Distribution of specific assets

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate; and
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

8.4 Capitalisation of reserves and profits

With the consent of the Holding Company, the Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 1.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

8.5 Applying a sum for the benefit of Members

The ways in which a sum may be applied for the benefit of Members under article 1.1 are:

- (a) in paying up any amounts unpaid on shares held by members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

9. SERVICE OF DOCUMENTS

9.1 Document includes notice

In article 9, a reference to a document includes a notice and a notification by electronic means.

9.2 Methods of service

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the member by an electronic means nominated by the Member that:
 - (i) the notice of meeting is available; and
 - (ii) how the Member may use the nominated access means to access the document.

9.3 Post

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
 - (b) if sent to an address outside Australia, must be sent by airmail,
- and, in either case, is taken to have been given and received on the day after the day of its posting.

9.4 Fax or other electronic address

A document sent or given by fax or to an electronic address:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the day of its transmission.

9.5 Electronic means

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

10. INDEMNITY AND INSURANCE

10.1 Indemnity

The Company will indemnify any current or former Director, Secretary or an executive officer of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity;

except to the extent that:

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

10.2 Insurance

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

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

10.3 Contract

The Company may enter into an agreement with a person referred to in articles 10.1 and 10.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.