

Special Resolutions for the proposed amendments to the East African Breweries Limited (“EABL” or the Company”) Articles of Association

Adoption of certain amendments to the Articles of Association:

To consider and, if thought fit, pass the following resolutions as Special Resolutions:-

- (a) In Article 2(a) substitute the words “(Chapter 486)” for “2015”.
- (b) In Article 2(f) include the words “Company as per section 3 of the Act” to the definition of Director.
- (c) In Article 4:
- i) delete the words “by the Memorandum of Association of”;
 - ii) substitute the word “or” which follows the phrase “Any branch or kind of business which the Company” for the word “by”; and
 - iii) substitute the phrase “be undertaken by the Company” for the word “undertake”.
- (d) In Article 7:
- i) delete the phrase “55 of the Act, provided that the rate per cent or the amount of the commission paid or agreed to be paid and the number of shares for which persons have agreed for a commission to subscribe absolutely shall be disclosed in the manner required by that section and that such”;
 - ii) insert the words “331 of the Act. Such” after the deletion in (e)(i) above;
 - iii) insert the words “other securities, or” after the phrase “or the allotment of fully or partly paid shares or”; and
 - iv) insert the words “Such commission may be paid in respect of a conditional or absolute subscription” after the sentence that reads “partly in one way and partly in the other.”
- (e) Delete Article 8 in its entirety.
- (f) In clause 9, substitute the wording of this article from the following:
- “At the date of adoption of these Articles the share capital of the Company is one billion five hundred million Shillings (Shs. 1,500,000,000) divided into one hundred and fifty million (150,000,000) ordinary shares of ten Shillings (Shs. 10) each.”*

to now read

*“At the date of adoption of these Articles the **paid up** issued share capital of the Company is one billion five hundred and eighty one million, five hundred and forty eight thousand, seven hundred and twelve Shillings (Shs.1,581,548,712) divided into*

seven hundred and ninety million seven hundred and seventy four thousand three hundred and fifty six (790,774,356) ordinary shares of two Shillings (Shs. 2) each."

(g) In Article 10, delete the words "or if no such resolution has been passed or so far as the resolution does not make specific provision, as the Board may determine."

(h) In Article 11 substitute the wording of this article from the following:

"Subject to the provisions of section 60 of the Act, any preference shares may, with the sanction of a special resolution, be issued upon the terms that they are, or are liable, to be redeemed at the option of the Company on the terms and in the manner as the Company may by special resolution determine before the issue of the shares."

to now read

"Subject to the provisions of section 520 of the Act, the Company may issue shares on the terms that they are to be redeemed, or are liable to be redeemed at the option of the Company or the shareholders. The directors may determine the terms, conditions and manner of redemption of the shares."

(i) In Article 12, substitute the wording of this article from the following:

"If at any time, the share capital is divided into different classes of shares, any of the rights for the time being attached to any share or class of shares may, subject to the provisions of the Act and notwithstanding that the Company may be or is about to be in liquidation, be altered, abrogated or varied in such manner (if any) as may be provided in such rights, or, in the absence of any such provision either with the consent in writing of the holders of not less than three fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of shares of that class duly convened and held in accordance with Article 13 (but not otherwise)."

to now read

"If at any time, the share capital is divided into different classes of shares, any of the rights for the time being attached to any share or class of shares may, subject to the provisions of the Act and notwithstanding that the Company may be or is about to be in liquidation, be altered, abrogated or varied in such manner (if any) as may be provided in such rights, or, in the absence of any such provision, with the consent in writing of the holders of the issued shares of that class."

(j) In Article 14, insert the words "and subject to clause 12 above" immediately after the words "by the conditions of issue of such shares".

(k) In Article 15:

- i) insert the words "in accordance with section 329 of the Act" after the phrase "the shares in the capital of the Company shall";

- ii) insert the words "*grant rights to subscribe for or convert any security into shares in the company*" after the phrase "*which may allot, grant options offer*";
 - iii) insert the words "*with rights or restrictions as may be determined by ordinary resolution*" after the phrase "*offer or otherwise deal with or dispose of them*" and
 - iv) delete the words "*except in accordance with section 59 of the Act.*"
- (l) In Article 16 substitute the word "stock" for the word "securities".
- (m) Prior to Article 23 amend the heading from "LIEN" to now read "LIEN ON SHARES NOT FULLY PAID".
- (n) In Article 36 delete the words "*and without giving any reason*" after the words "*The Board may, in its absolute discretion*".
- (o) In Article 37 insert the following phrase "*together with a statement specifying the reasons for refusal*" after the words "*send to the transferee notice of the refusal*".
- (p) In Article 46 insert the words "*subject to the Statutes*" after the phrase "*Forfeited shares shall be deemed to be the property of the Company and*".
- (q) Delete Articles 50, 51, 52 and 53 in respect of stock in their entirety.
- (r) Include two new articles 50 and 51 that read as follows:
- i) *The Company shall not convert any of its shares into stock.*
 - ii) *Any stock existing at the commencement of Section 324(4) of the Companies Act 2015 shall be converted into shares of one shilling each.*
- (s) Delete existing Articles 54 and 55 in respect of share warrants in their entirety and the subsequent articles be renumbered accordingly.
- (t) In Article 52, substitute the words "*The Company may from time to time, by ordinary resolution, increase its share capital by such sum to be divided into shares of such amounts as the resolution shall prescribe*"
for
"The Company may from time to time, increase its share capital by allotting new shares."
- (u) Substitute the current Article 53 for the following new articles (which shall be renumbered accordingly):

"New Article: The Company may, by ordinary resolution alter its share capital in any

one of the ways set out in Division I of Part XV of the Act (alteration and consolidation of share capital) which include:

- (a) the increase in its share capital by allotting new shares; or
- (b) reducing its share capital in accordance with Article 53.

New Article: The Company may by ordinary resolution:

- (a) subdivide its shares, or any of them, into shares of a smaller nominal amount than its existing shares; or
- (b) consolidate and divide all or any of its share capital into shares of a larger nominal amount than its existing shares.

New Article: Any resolutions authorising the Company to sub-divide its shares may determine that, as between the shares resulting from the sub-division, any of the shares may have any preference or advantage or be subject to any restriction as compared with the others.

New Article: When subdividing, consolidating or dividing its shares, the Company shall ensure that the proportion between the amount paid and the amount if any unpaid on each resulting share is the same as it was in the case of the share from which that share is derived."

(v) Substitute the following wording of the current Article 54:

"The Company may from time to time, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account in any manner and with and subject to any incident authorised and consent required by law."

for the following new wording:

"The Company may from time to time, by special resolution, reduce its share capital in any way. In particular, the Company may:

- (a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or
- (b) either with or without extinguishing or reducing liability on any of its shares
 -
 - i) cancel any paid-up share capital that is lost or unrepresented by available assets; or
 - ii) repay any paid up shares capital in excess of the Company's requirements."

In addition, a new article shall be inserted following the new wording and renumbered accordingly:

"If the net assets of the Company are half or less of its called-up share capital, the directors shall convene a general meeting of the company to consider how to deal with the situation. The directors shall issue a notice of a general meeting not later than twenty-eight days from the day on which a director first became aware of this fact."

(w) Insert a new article to be numbered as Article 59 as follows:

“ACQUISITION BY THE COMPANY OF ITS OWN SHARES

The Company may acquire its own shares in accordance with Part XVI of the Act.”

- (x) Insert a new article to be numbered as Article 60 as follows:

“ALLOTMENT OF SHARES

The Board may not exercise any power conferred on them to allot shares in the Company without the prior authorisation of the Company by resolution if the authorisation is required under section 329 of the Act. “

- (y) Substitute the wording of the current Article 62 from the following:

“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. Not more than fifteen months shall elapse between the date of one annual general meeting of the Company and that of the next. Annual and other general meetings shall be held at such times and places as the Board shall appoint. All general meetings, other than annual general meetings, shall be called extraordinary general meetings.”

to now read

“Subject to the provisions of Division 5, Part XIII of the Act, the Company shall, in respect of each financial year of the Company, hold a general meeting as its annual general meeting in accordance with section 310 of the Act. The Company shall hold its annual general meeting within six months from and including the day following its accounting reference date in each year, whether or not it holds other meetings in that period.”

- (z) Article 63 – create a new Article 63 to read as follows:

“Annual and other general meetings shall be held at such times and places as the Board shall appoint. All general meetings, other than annual general meetings, shall be called extraordinary general meetings.”

The subsequent articles are to be renumbered accordingly.

- (aa) In Article 64

- i) insert the words *“under the provisions of section 277 and 278 of the Act”* after the words *“The Board may convene an extraordinary general meeting whenever it thinks fit”*; and
- ii) substitute the *“132”* for *“279”*.

- (bb) In Article 65

- i) insert the word *“annual”* after the word *“Every”* at the beginning of the paragraph;
- ii) delete the following sentence in its entirety:

“The notice shall specify the place, the date and the time of such general meeting and, in case of special business, the nature of that business and shall be given, in the manner hereinafter mentioned or any such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under these Articles, entitled to receive such notices from the Company; provided that a meeting may be called by shorter notice than that specified in this Article if so agreed by the members referred to in and otherwise in accordance with the provisions of section 133(3) of the Act.”

(cc) Insert the following new articles after the current Article 65 (which shall be renumbered accordingly as article 66 and 67):

*“**New Article:** The directors shall ensure that the notice shall specify the place, the date and the time of such general meeting, state the general nature of the business to be dealt with at the meeting; for the notice convening an annual general meeting, state that the meeting is an annual general meeting; and, in case of a resolution (special or otherwise), the nature of that resolution and shall be given accompanied by a statement containing any information or explanation that is reasonably necessary to indicate the purpose of the resolution; if a special resolution is to be moved at the meeting, specify the intention and include the text of the special resolution; and contain a statement specifying a member's right to appoint a proxy under section 289 of the Act.”*

*“**New Article:** The Company shall give notice of a general meeting either in hard copy form, in electronic form (including via visual telecommunication modes and short message services), by means of a website (in accordance with section 282 of the Act); or partly by one such means and partly by one or more of the other such means.”*

(dd) Article 74, insert the following sentence at the end of the paragraph:

“Nothing in these Articles shall restrict or exclude any of the power or rights of a meeting which have been given by law.”

(ee) Insert a new article after the current Article 74 which shall be renumbered as article 75:

“No business shall be transacted at any adjourned meeting other than the business which might properly have been transacted at the meeting from which the adjournment took place.”

All subsequent articles shall be renumbered accordingly.

(ff) In Article 79, insert the words “a resolution is put to the vote” after the words “on a show of hands.”

(gg) In Article 94:

i) substitute the following paragraph:

“Any instrument appointing a proxy may be delivered by facsimile transmitted to the registered office or such other place as is specified in the notice convening the meeting or in any notice of adjournment or in any instrument of proxy sent out by the Company in relation to the meeting provided that:”

for

“Subject to the Act, the Board may accept the appointment of a proxy received by electronic means on such terms and subject to such conditions as it considers fit provided that:”

- ii) in Article 94(a) substitute the words “the facsimile” for “the proxy”;
- iii) in Article 94(b) substitute the word “facsimile” which appears after the phrase “(such determination to be conclusive that such” for the word “proxy”; and
- iv) in Article 94(b) substitute the word “facsimile” which appears after the phrase “in an acceptable manner including a determination that such” for the word “transmission”.

(hh) Insert a new article after the current Article 94 which is renumbered as article 95:

“New Article: For the purposes of Articles 102 and 103, the Board may require such reasonable evidence it considers necessary to determine:

- (a) *the identity of the member and the proxy; and*
- (b) *where the proxy is appointed by a person acting on behalf of the member, the authority of that person to make the appointment.*

“A member may appoint another person as his proxy to exercise all or any of his rights to attend and to speak and to vote (both on a show of hands and on a poll) on a resolution or amendment of a resolution, or on other business arising, at a meeting or meetings of the Company. Unless the contrary is stated in it, the appointment of a proxy shall be deemed to confer authority to exercise all such rights, as the proxy thinks fit.

“New Article: A member may appoint more than one proxy in relation to a meeting, provided that each proxy is appointed to exercise the rights attached to different shares held by the member. When two or more valid but differing appointments of proxy are delivered or received for the same share for use at the same meeting, the one which is last validly delivered or received (regardless of its date or the date of its execution) shall be treated as replacing and revoking the other or others as regards that share. If the Company is unable to determine which appointment was last validly delivered or received, none of them shall be treated as valid in respect of that share.

“New Article: Delivery or receipt of an appointment of proxy does not prevent a member attending and voting in person at the meeting or an adjournment of the meeting or on a poll.

New Article: The appointment of a proxy shall (unless the contrary is stated in it) be valid for an adjournment of the meeting as well as for the meeting or meetings to which it relates. The appointment of a proxy shall be valid for 12 months from the date

of execution or, in the case of an appointment of proxy delivered by electronic means, for 12 months from the date of delivery unless otherwise specified by the Board."

(ii) In Article 111:

- i) insert the words *"Without prejudice to the provisions for retirement (by rotation or otherwise) contained in these Articles"* immediately before the words *"a Director shall vacate office as such if"*;
- ii) in Article 111 (b) delete the words *"section 186 of the Act or by virtue of"*;
- iii) in Article 111 (c) substitute the words *"he become prohibited from being a Director by reason of any order made under section 189 of the Act"* for the words *"he becomes prohibited from being a Director by reason of any order made under Part X of the Act"*; and
- iv) insert a new sub-article (g) which reads *"is removed from office of director by an ordinary resolution passed in accordance with section 139 of the Act"*.

(jj) Insert a new article after Article 113 as follows (which shall then be renumbered accordingly):

"If the office of a director is vacated for any reason, he shall cease to be a member of any committee or sub-committee of the Board."

(kk) Prior to Article 120 amend the heading from *"DIRECTORS CONTRACTS"* to now read *"TRANSACTIONS OR OTHER ARRANGEMENTS WITH THE COMPANY."*

(ll) In Article 124 substitute the word *"twice"* for the words *"three times"* immediately following the words *"shall not, without the previous authority of an ordinary resolution of the Company exceed..."*.

(mm) Insert a new article after the current Article 125 which shall be numbered as article 126 as follows (which shall then be renumbered accordingly):

"A certificate or report by the auditors of the Company as to the amount of any borrowings or to the effect that the limit imposed by article 127 has not been or will not be exceeded at any particular time or times, shall be conclusive evidence of such amount or fact for the purposes of this Article. Nevertheless the Board may at any time rely on a bona fide estimate of the aggregate of the borrowings. If, in consequence, the limit on borrowings set out in Article 125 is inadvertently exceeded, the amount of borrowings equal to the excess may be disregarded for 180 days after the date on which by reason of a determination of the auditors of the Company or otherwise the Board becomes aware that such a situation has or may have arisen."

(nn) Delete the current Article 124 in its entirety.

(oo) In Article 142 insert the following words "*(unless he is not entitled to vote on the resolution in question)*" after the words "*the chairman of the meeting shall have a second or casting vote.*"

(pp) In Article 155 insert the words "*who must be a member of the Institute of Certificated Public Secretaries of Kenya*".

(qq) In Article 156 substitute the following words (which shall then be renumbered accordingly):

"The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or a committee authorised by the Board in that behalf and every instrument to which the seal shall be affixed shall be signed by a Director and by the Secretary or by a second Director or by some other person appointed by the Board for that purpose."

for the following words

"A common seal may only be used by the authority of the Board. The Board may decide by what means and in what form a common seal or official seal (whether for use outside Kenya or for sealing securities) is to be used."

(rr) Insert new articles after the current Article 156 as follows (which shall then be renumbered accordingly):

*"**New Article:** If the company has an official seal for sealing securities, then the Seal shall be used only for sealing securities issued by the Company and documents creating or evidencing securities so issued. Any such securities or documents sealed with the Seal shall not require to be signed unless the Board decides otherwise or the law otherwise requires."*

*"**New Article:** The Board may decide who will sign an instrument to which a Seal is affixed (or in the case of a share certificate, on which the Seal may be printed) either generally or in relation to a particular instrument or type of instrument and may also determine either generally or in a particular case that a signature may be dispensed with or affixed by mechanical means."*

(ss) In Article 175:

- i) insert the words "*the relevant*" after the words "*The Directors shall from time to time, in accordance with...*"; and
- ii) substitute the words "*section 148 to 152 inclusive, and 154, 155 and 157*" for the words "*under Part XXV*".

(tt) In Article 187, delete the sentence "*The holder of a share warrant shall be entitled to receive notices or other documents or information only by advertisement in the manner provided for in this Article 175.*"

(uu) In Article 178, substitute the following wording:

"If the Company shall be wound up, the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide

amongst the members, in specie or in kind, the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the members as the liquidator, with the like sanction, shall think fit but so that no member shall be compelled to accept any shares or other securities whereupon there is any liability."

For the following which will be Article 192:

"If the Company shall be wound up, the relevant insolvency provisions outlined under the Insolvency Act 2015 and the Insolvency Regulations Legal Notice number 47 of 2016 shall apply."

(vv) Prior to Article 193 amend the heading from "INDEMNITY" to now read "INDEMNITY AND INSURANCE."

(ww) In Article 193

- i) delete the words "206 of the Act" and insert the words "194 of the Act"; and
- ii) insert the following words "Notwithstanding the above, this Article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Statutes or by any other provision of law."

(xx) Insert new article after the current Article 193 as follows which article shall be numbered as article 194 (and all subsequent articles shall be renumbered accordingly):

New Articles: *The directors may decide to purchase and maintain insurance, at the expense of the Company, for a director of the Company, or a director of an associated company of the Company against*

- (a) any liability to any person attaching to the director in connection with any negligence, default, breach of duty or breach of trust (except for fraud) in relation to the Company or associated company (as the case may be); or*
- (b) any liability incurred by the director in defending any proceedings (whether civil or criminal) taken against the director for negligence, default, breach of duty or breach of trust (including fraud) in relation to the Company or associated company."*