

## Directions to appoint a monitoring trustee

### Interpretation

1. In these Directions:

'**Diageo**' means Diageo plc;

'**Divestment**' means the Whyte & Mackay business (with the exception of the Retained Assets) to be divested as proposed undertakings in lieu of reference as described in the OFT's decision of 25 November 2013;

'**MT**' means the monitoring trustee appointed in accordance with these Directions;

'**United Spirits**' means the spirits business of United Spirits Limited, acquired by Diageo on 4 July 2013 pursuant to its acquisition of a 25.02 per cent shareholding in the business, and the terms of associated voting and shareholders' agreements;

'**Retained Assets**' means (1) the Dalmore and Tamnavulin malt distilleries (including assets used to run those distilleries), (2) the Dalmore and Tamnavulin brands and maturing inventory from these distilleries as well as associated management and operations; (3) the management and staff for each distillery as well as any supply arrangements specifically associated with either production at the sites and (4) sale of product from the sites;

'**Undertakings**' means the initial undertakings provided on 16 July 2013 to the OFT by Diageo in connection with the completed acquisition of United Spirits Limited;

'**Whyte & Mackay business**' means the business of Whyte & Mackay Group Limited in relation to the production, distribution and marketing of spirits in the UK (with the exception of the Retained Assets)

Terms and expressions defined in the Undertakings have the same meaning in these Directions, unless the context requires otherwise.

### Appointment

2. Diageo must appoint a MT in order to:

(a) monitor compliance by Diageo with the Undertakings; and



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(b) support the OFT taking any remedial action which may be required.

3. The MT must act on behalf of the OFT and be under an obligation to the OFT to carry out his or her functions to the best of his or her abilities.
4. Diageo must cooperate fully with the MT, in particular as set out below, and Diageo must ensure that the terms and conditions of appointment of the MT reflect and give effect to the functions and obligations of the MT and the obligations of Diageo as set out in these Directions.

### **General**

5. The MT must possess appropriate qualifications and experience to carry out his or her functions.
6. The MT must neither have nor become exposed to a conflict of interest that impairs the MT's objectivity and independence in discharging his or her duties under these Directions, unless it can be resolved in a manner and within a timeframe acceptable to the OFT.
7. Diageo shall remunerate and reimburse the MT for all reasonable costs properly incurred in accordance with the terms and conditions of the appointment and in such a way so as not to impede the MT's independence or ability to effectively and properly carry out his or her functions.
8. (a) The appointment of a MT by Diageo must be subject to approval by the OFT including with respect to the identity of the MT and his or her terms and conditions of appointment in their entirety.  
  
(b) Diageo must inform the OFT as soon as is reasonably practicable and in any event by 5pm (UK time) on 6 December 2013 of the identity of the MT that Diageo proposes to appoint and provide the OFT with draft terms and conditions of appointment within 24 hours of receiving them. If Diageo fails to so inform the OFT, the OFT will notify Diageo of the identity of the MT that Diageo must appoint.
9. Diageo must appoint the MT as soon as is reasonably practicable and, in any event, within 24 hours of the OFT giving its approval as to the identity of the MT and his or her terms and conditions of appointment in their entirety and the MT will continue to act for the specified period (as defined in the Undertakings).

10. Once the MT has been approved by the OFT and appointed, Diageo must provide the OFT with a copy of the agreed terms and conditions of appointment.

## **Functions**

11. The functions of the MT will be to:

- (a) ascertain and report on the current level of compliance by Diageo with the Undertakings (and associated consents);

- (b) assess the arrangements made by Diageo for compliance with the Undertakings and what changes to those arrangements, if any, are necessary to preserve the possibility of the OFT taking any remedial action, if required; and

- (c) monitor, assess and report to the OFT on Diageo's progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013).

The MT will also be required to:

- (d) identify and monitor the arrangements made by Diageo for (i) ensuring compliance with the Undertakings and /or (ii) making timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013); and

- (e) without prejudice to the right of Diageo to contact the OFT, respond to any questions which Diageo may have in relation to compliance with the Undertakings and/or to making timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013), in consultation with the OFT.

12. The MT must take such steps as he or she reasonably considers necessary in order to carry out his or her functions effectively.
13. The MT must comply with any requests made by the OFT for the purpose of ensuring the full and effective compliance by Diageo with the Undertakings and timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013).
14. When assessing whether timely progress is made towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision

of 25 November 2013), the MT will have regard to any milestones in the timetable provided by Diageo to the OFT according to paragraph 18 below. Such timetable will specify (but is not limited to) target dates for Board approval, shareholder approval, and the obtaining of bank consents.

### **Obligations of Diageo**

15. Diageo and each of their affiliates and their employees, officers, directors, advisers and consultants must cooperate fully with the MT, in particular by providing the MT with all cooperation, assistance and information as the MT may reasonably require in order to discharge his or her functions, including but not limited to:
  - (a) the provision of full and complete access to all personnel, books, records, documents, facilities and information of Diageo and the Whyte & Mackay business (as defined in the Undertakings) (as available to Diageo) as the MT may reasonably require; and
  - (b) the provision of such office and supporting facilities as the MT may reasonably require.
16. If Diageo or any of their subsidiaries is in any doubt as to whether any action or communication would infringe the Undertakings, it is required to contact the MT for clarification.
17. If Diageo or any of their subsidiaries has any reason to suspect that the Undertakings may have been breached, it must notify the MT and the OFT immediately.
18. Diageo will provide the MT, as soon as reasonably practicable after his or her appointment, with a timetable of milestones, agreed with the OFT, for achieving the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013).

### **Reporting functions**

19. The MT is required to provide an initial report to the OFT no later than the day which falls two weeks after the MT's appointment giving details of any arrangements which have been, or should be, put in place to ensure compliance with the Undertakings, and including among other things details of the current extent of compliance with the Undertakings, and details on the progress made by Diageo at that point towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013).

20. In addition to providing the initial report referred to in paragraph 19 above, the MT must provide fortnightly thereafter (or otherwise as required by the OFT) a statement to the OFT stating whether or not, in his or her view, Diageo have complied with the Undertakings and on whether Diageo is making timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013). At the same time, the MT must provide the OFT with a report setting out the following:

(a) the basis for the MT's view that the Undertakings have or have not, as the case may be, been complied with and in particular whether:

(i) anything has caused him or her to be concerned as to whether Diageo have complied with the Undertakings, and if it has, whether those concerns have been resolved and why;

(ii) he or she has any remaining doubts or uncertainties as to whether Diageo have complied with the Undertakings; and

(iii) anything that causes him or her to be concerned about a possible future breach of the Undertakings (whether deliberate or inadvertent);

(b) details of any factors that might indicate deterioration of the Whyte & Mackay business;

(c) the extent to which Diageo has cooperated with the MT in his or her task of monitoring its compliance with the Undertakings and details of any aspects of the cooperation of Diageo that he considers could be improved;

(d) the extent to which the MT considers that he or she is in an appropriate position to monitor the compliance of Diageo with the Undertakings and if there is anything that the MT considers would assist him or her in monitoring compliance;

(e) any current or anticipated requests for consent to vary the Undertakings;

(f) the basis for the MT's view that Diageo is or is not, as the case may be, making timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013), having regard to the timelines referred to in paragraph 18 above; and

(g) the information the MT used to compile the report.

21. When providing reports to the OFT the MT must ensure that he or she does not disclose any information or documents to the OFT which Diageo would be entitled to withhold from the OFT on the grounds of legal privilege.
22. The MT must immediately notify the OFT in writing if he or she forms a reasonable suspicion that the Undertakings have been breached, and/or that Diageo is not making timely progress towards the provisional sale of the Divestment to a suitable purchaser or purchasers (as described in the OFT's decision of 25 November 2013). In addition, the MT must immediately notify the OFT in writing if he or she considers that he or she is no longer in a position to effectively carry out his or her functions. In that situation, the MT must give reasons for this view; including any supporting evidence available (unless doing so would infringe the obligations referred to in paragraph 21 above).
23. All communications between the MT and the OFT (including the statements and reports referred to in paragraphs 19 and 20) are confidential and should not be disclosed to Diageo, save with the prior written consent of the OFT. The MT shall not disclose such communications to third parties.