

SH10

Notice of particulars of variation of rights attached to shares



✓ **What this form is for**
You may use this form to give notice of particulars of variation of rights attached to shares

✗ **What this form is NOT for**
You cannot use this form to give notice of particulars of variation of class rights of members of company without share capital. If you do this, please use form SH10.



LD3 02/11/2016 #117
COMPANIES HOUSE

1 Company details

Company number 1 0 1 3 6 3 4 9

Company name in full FRONERI LIMITED

→ **Filling in this form**
Please complete in typescript or in bold black capitals

All fields are mandatory unless specified or indicated by *

2 Date of variation of rights

Date of variation of rights d 3 d 0 m 0 m 9 y 2 y 0 y 1 y 6

3 Details of variation of rights

Please give details of the variation of rights attached to shares

Variation

Please see updated rights of the deferred shares on the continuation page.

Continuation pages
Please use a continuation page if you need to enter more details

4 Signature

I am signing this form on behalf of the company

Signature

Signature

✗

✗

This form may be signed by
Director ①, Secretary, Person authorised ②, Administrator, Administrative receiver, Receiver, Receiver manager, Chantry commission receiver and manager, CIC manager

- ① **Societas Europaea**
If the form is being filed on behalf of a Societas Europaea (SE), please delete 'director' and insert details of which organ of the SE the person signing has membership
- ② **Person authorised**
Under either Section 270 or 274 of the Companies Act 2006

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Presenter information

You do not have to give any contact information, but if you do it will help Companies House if there is a query on the form. The contact information you give will be visible to searchers of the public record.

Contact name **Caroline Crawford**

Company name **Allen & Overy LLP**

Address **One Bishops Square**

Post town **London**

County/Region

Postcode **E 1 6 A D**

Country **United Kingdom**

DX

Telephone **020 3088 0000**



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☒ The company name and number match the information held on the public Register
- ☒ You have entered the date of variation of rights in section 2
- ☒ You have provided details of the variation of rights in section 3
- ☒ You have signed the form



Important information

Please note that all information on this form will appear on the public record.



Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the appropriate address below.

For companies registered in England and Wales.
The Registrar of Companies, Companies House,
Crown Way, Cardiff, Wales, CF14 3UZ
DX 33050 Cardiff

For companies registered in Scotland.
The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF
DX ED235 Edinburgh 1
or LP - 4 Edinburgh 2 (Legal Post)

For companies registered in Northern Ireland.
The Registrar of Companies, Companies House,
Second Floor, The Linenhall, 32-38 Linenhall Street,
Belfast, Northern Ireland, BT2 8BG
DX 481 N R Belfast 1



Further information

For further information, please see the guidance notes on the website at www.companieshouse.gov.uk or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.companieshouse.gov.uk

SH10 – Continuation Page

1. DEFINITIONS

“A Ordinary Shares” means the A ordinary shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“A Settlement Shares” means the A Settlement Shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“Adoption Date” means the date the Articles were adopted,

“Articles” means the Articles of Association of the Company adopted by special resolution passed on 30 September 2016,

“Asset Sale” means a sale by the Company or any other member of the Group of all or substantially all of the Group’s business, assets and undertakings to a single buyer or to one or more buyers as part of a single transaction or series of connected transactions (other than as part of a Reorganisation Transaction),

“B Ordinary Shares” means the B ordinary shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“B Settlement Shares” means the B Settlement Shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“C Ordinary Shares” means the C ordinary shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“C Settlement Shares” means the C Settlement Shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“Company” means Froneri Limited,

“D Ordinary Shares” means the D ordinary shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“Debt Finance” means the facilities availed pursuant to the Senior Facilities and, from time to time, any further facilities of the Group for the funding of any future acquisitions, repayment of or refinancing of third party debt and capital expenditure and working capital,

“Debt Securities” means any Loan Notes and any debt or debt-like security or rights convertible into or exercisable as or exchangeable for debt securities of any class or series of loan capital (or which are convertible into or exercisable as or exchangeable for any security which is, in turn, convertible into or exercisable or exchangeable for debt securities of any class or series of loan capital) issued by any Group Company from time to time, in each case, having the rights and being subject to the restrictions set out in the Articles and the Shareholders’ Agreement and the relevant instrument constituting such security (in each case excluding the Nestlé Shareholder Loans, Nestlé Completion Loans and the Debt Finance and any refinancing of any of the same from time to time),

“Deferred Shares” means the deferred shares having a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“Directors” means together, the Nestlé Directors and the Riviera Directors and any other director appointed to the Supervisory Board from time to time, each, a “Director”,

‘Encumbrance’ means a mortgage, charge, pledge, lien, option, restriction, equity, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, or other type of agreement or arrangement having similar effect,

‘Exit’ means a Sale, Asset Sale, IPO or Winding-Up,

‘Family Member’ means, in relation to a Manager, his spouse or civil partner and/or any one or more of his children (including step-children) who are at least 18 years of age,

‘Family Transferee’ means (i) a Family Member or (ii) the trustees of a Family Trust, to whom the Managers and their Family Transferees may Transfer part of their Securities at any time to, provided in each case that the prior written consent of the Supervisory Board has been obtained (such consent not to be unreasonably withheld or delayed) and subject to

- (a) the Manager continuing to hold at least 50 per cent in number of each class of Securities ever issued to or acquired by him, and
- (b) the relevant Family Transferee (I) satisfying the Nestlé Parties’ and/or Riviera’s requirements for KYC Information, (II) undertaking (in a form reasonably acceptable to the Supervisory Board) to exercise all voting rights attaching to Securities in accordance with the directions of the relevant Manager, and (III) entering into any security arrangements as the Supervisory Board may reasonably require,

‘Family Trust’ means, in relation to a Manager, a trust or settlement set up wholly for the benefit of that person and/or his Family Members,

‘Group’ means the Company (or any New Holding Company) and any subsidiary undertaking of the Company (or any New Holding Company) from time to time and references to **“Group Company”** and **“member of the Group”** shall be construed accordingly,

‘IPO’ means the admission of the whole of any class of the issued share capital of any Group Company (including any New Holding Company) to trading on a regulated market (as defined in Directive 2004/93/EC on markets in financial instruments (MiFiD)) or other internationally recognised investment exchange,

‘KYC Information’ means such information as either Investor may reasonably require in order to satisfy their obligations in respect of any “know your client” or other anti-money laundering legislation, regulation or best practice from time to time,

‘Loan Notes’ means the 12 per cent fixed rate unsecured loan notes 2026 issued by the Company,

‘Local Transfer Documents’ means the transfer agreements entered into between members of the Nestlé Group and members of the Group, dated on or around the date of the Shareholders’ Agreement in relation to the transfer of the Nestlé business to the Group,

‘Managers’ means those individuals holding an interest in Securities and/or (unless the context requires otherwise) any Family Transferees of an individual, any vehicle through which an individual holds Securities and, in each case, any person holding Securities on his, their or its behalf (howsoever acquired), and who are a party to the Shareholder’s Agreement and/or a Nominee Agreement, and a **“Manager”** means any one of them,

‘Nestlé’ means Nestlé S A, a *société anonyme* incorporated in Switzerland with uniform identification number CHE-105 909 036, having its registered office at Avenue Nestlé 55, 1800 Vevey, Canton of Vaud, Switzerland,

“Nestlé Completion Loans” means the loans between Nestlé and the Company or a Group Company for the purposes of funding the consideration payable by the Group Companies under the Local Transfer Documents, funding certain Taxation charges payable by the Group Companies in connection with the establishment of the Group and/or providing short term liquidity, in each case entered into on or around the date of the Shareholders’ Agreement,

“Nestlé Directors” means up to three Directors who Nestlé is entitled to appoint to the Supervisory Board, unless Nestlé and Riviera agree otherwise in writing,

“Nestlé Parties” means Nestlé, Nestlé France and Nestlé Germany,

“Nestlé Shareholder Loans” means the loans granted pursuant to the Nestlé Shareholder Loan Agreements,

“Nestlé Shareholder Loan Agreements” means the €800,000,000 facility agreement entered into between Nestlé Finance International Ltd, as lender, and the Company, as borrower, on 8 September 2016 and the facility agreement of up to 80,000,000 Brazilian Reals to be entered into between Nestlé Finance International Limited, as lender, and Froneri Brasil Distribuidora de Sorvetes e Congelados Ltda, as borrower, on or after the date of the Shareholders’ Agreement (each as amended and/or restated from time to time),

“New Holding Company” means any new holding company or parent undertaking of the Company, formed for the purpose of facilitating a Reorganisation Transaction, Refinancing or an IPO,

“Nominee Agreements” means

- (a) the nominee agreement dated 30 September 2016 among the Company, Elian Employee Benefit Trustee Limited, and the Participants (as defined therein), and
- (b) the nominee agreement dated 30 September 2016 among the Company, Pacific Custodians Pty Limited, and the Participants (as defined therein),

and **“Nominee Agreement”** shall mean either of such Nominee Agreements as the context may require,

“Ordinary Shares” means together the A Ordinary Shares, the B Ordinary Shares, the C Ordinary Shares and the D Ordinary Shares,

“Preference Shares” means the preference shares with a nominal value of €0.01 each in the capital of the Company and having the rights set out in the Articles,

“Refinancing” means any raising of Debt Finance or any refinancing of the existing debt or equity financing arrangements of the Group,

“Reorganisation Transaction” means a reorganisation of the Group by any means including the acquisition of the Company by a New Holding Company or any other reorganisation of the Group involving the Group’s share or debt capital (including the conversion, consolidation, sub-division or redesignation (as appropriate) of the Shares into a single class of ordinary shares) in preparation for an Exit, Refinancing or acquisition of another business by a Group Company,

“Riviera” means Riviera Topco S à r l, a *société à responsabilité limitée* incorporated under the laws of the Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B177014, having its registered office at 43-45 Allée Scheffer, L-2520 Luxembourg

“Riviera Director” means up to three Directors who Riviera is entitled to appoint to the Supervisory Board, unless Nestlé and Riviera agree otherwise in writing,

“Sale” means the sale of all the Shares to a bona fide third party purchaser as part of a single transaction or a series of related transactions,

“Securities” means, together, the Debt Securities and Shares,

“Senior Facilities” means certain term and revolving facilities to be made available to the Group pursuant to a senior facilities agreement to be entered into, on or around the Adoption Date,

“Settlement Shares” means the A Settlement Shares, the B Settlement Shares and the C Settlement Shares,

“Shareholders’ Agreement” means the shareholders agreement relating to the Company between (i) the Company, (ii) certain Managers named therein, (iii) the Nestlé Parties, and (iv) Riviera dated on or around the Adoption Date (and as may be amended, varied, amended and restated or replaced from time to time),

“Shares” means the Ordinary Shares, Preference Shares and any other shares of any class or series of capital stock or series of any securities (other than Debt Securities) or rights convertible into or exercisable or exchangeable for shares of any class or series of capital stock (or which are convertible into or exercisable or exchangeable for any security which is, in turn, convertible into or exercisable or exchangeable for shares of any class or series of capital stock) of the Company or any other New Holding Company from time to time, in each case, having the rights and being subject to the restrictions set out in the Articles, and “Share” means any one of them (as the context may require),

“Supervisory Board” means the board of directors of the Company from time to time,

“Tax Authority” means any taxing or other authority competent to impose any liability in respect of Taxation or responsible for the administration and/or collection of Taxation or enforcement of any law in relation to Taxation,

“Taxation” means all forms of taxation (other than deferred tax) and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies, in each case in the nature of tax, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or otherwise and shall further include payments to a Tax Authority on account of tax, in each case anywhere in the world wherever imposed and whether chargeable or primarily against or attributable directly or primarily to a Group Company or any other person and all penalties and interest relating thereto,

“Transfer” means the transfer of either or both of the legal and beneficial ownership in any share and/or grant of an option to acquire either or both of the legal and beneficial ownership in such share, and the following shall be deemed (but without limitation) to be a Transfer of a share

- (a) any direction (by way of renunciation or otherwise) by a person entitled to an allotment or issue of any share that such share be allotted or issued to some person other than himself,
- (b) any sale or other disposition of any legal or equitable interest in a share (including any attached voting right) and whether or not by the registered holder thereof and whether or not for consideration or otherwise and whether or not effected by an instrument in writing,
- (c) any grant or creation of an Encumbrance over any share, and
- (d) any agreement, whether or not subject to any conditions, to do any of the matters set out in (a), (b) or (c) above, and

“Winding-Up” means a distribution pursuant to a winding up, dissolution or liquidation of the Company or any New Holding Company (including following an Asset Sale)

2. DEFERRED SHARES

2.1 Income

The holders of Deferred Shares (as holders of Deferred Shares) shall not be entitled to receive any dividend or distribution

2.2 Return of Capital

On a return of capital, whether on a Winding-Up or otherwise, the Deferred Shares shall entitle the holder thereof only to the repayment of the amounts paid up on such Shares (including any premium) after repayment of the capital paid up on the Ordinary Shares and the Settlement Shares plus the payment of €20,000,000,000 in aggregate on all of the Ordinary Shares and the Settlement Shares and the holders of the Deferred Shares (as such) shall not be entitled to any further participation in the assets or profits of the Company

2.3 Voting

The holders of Deferred Shares (as holders of Deferred Shares) shall not be entitled to receive notice of, nor to attend, speak or vote at any general meeting of the Company or to vote on any written resolution of the Company

2.4 Purchase and Redemption

(a) The Company may

- (i) appoint any person to execute, on behalf of the holders of the Deferred Shares then in issue (if any), a transfer thereof and/or an agreement to transfer the same to such person as the Company may determine as custodian thereof, and/or
- (ii) cancel and/or acquire the Deferred Shares then in issue (if any) (in accordance with the provisions of the Act),

in each case, without making any payment to or obtaining the sanction of the holders of the Deferred Shares and, pending such transfer, cancellation and/or purchase, to retain the certificate (if any) for such Shares

- (b) The Company may, at its option, redeem all or any of the Deferred Shares then in issue (if any) at a price not exceeding €0.01 for all of the Deferred Shares redeemed, having given the registered holder(s) of such Share(s) not less than 28 days' prior notice in writing of its intention so to do (such notice fixing a time and place for the redemption)

2.5 Re-classification

Upon the redemption or purchase by the Company or cancellation of any Deferred Shares, the Directors are authorised (without any consent or action of the Shareholders or any class thereof being required) to convert and sub-divide the share capital created as a consequence of such redemption, purchase or cancellation into Shares of any class of share capital into which the share capital of the Company is or may, at that time, be divided of a like nominal amount (as nearly as may be)