

CO-OPERATIVE COMPANIES BILL

EXPLANATORY NOTE

THIS Bill repeals and replaces with a single Act the Co-operative Dairy Companies Act 1949, the Co-operative Companies Act 1956, the Co-operative Freezing Companies Act 1960, and the Co-operative Forestry Companies Act 1978.

The Co-operative Dairy Companies Act 1949, the Co-operative Freezing Companies Act 1960, and the Co-operative Forestry Companies Act 1978 provide for the registration of companies as co-operative dairy companies, co-operative freezing companies, and co-operative forestry companies respectively.

The Co-operative Companies Act 1956 provides for the registration of specific types of co-operative company as well as companies that are declared to be co-operative companies by Order in Council. The co-operative companies specified in the Act are co-operative egg marketing companies, co-operative fertiliser manufacturing companies, co-operative fish marketing companies, co-operative milk marketing companies, and co-operative pig marketing companies. In addition, there are at present 19 Orders in Council in force under the Act declaring companies to be co-operative companies. They include co-operative aerial services companies, co-operative deer slaughtering companies, co-operative tea processing or marketing companies, co-operative education services companies, and co-operative waste recycling companies.

The principal feature of co-operative companies is that the companies and their shareholders carry on business on a mutual basis and the holding of shares by shareholders is treated as an essential pre-requisite to that relationship rather than as an ordinary investment. The surrendering of shares and the issue of nominal value shares are central features of co-operative status.

In addition to other matters, the present co-operative companies legislation—

- (a) Provides for shareholders to surrender their shares to the company;
- (b) Empowers the companies to require that shares be surrendered;
- (c) Provides for the reissue of shares that have been surrendered;
- (d) Provides for the payment of compensation in the event of the surrender of shares;
- (e) Modifies the application of the Companies Act 1955 to those companies;
- (f) Restricts use of the word “co-operative” in company names to registered co-operatives.

All companies registered under the Companies Act 1955, including co-operative companies, are required to reregister by 30 June 1997 as companies under the

Companies Act 1993. The Companies Act 1993 allows companies incorporated under that Act to acquire their own shares and provides for the redemption of shares at the option of shareholders or at the option of the company.

A principal reason for this Bill arises from the fact that these provisions are of general application to all companies and could not be applied satisfactorily to surrenders by co-operatives. Under the Bill, to retain its co-operative status, at least 60 percent of the shareholders of a co-operative company must be transacting shareholders. The surrender provisions of the Bill are necessary to maintain that level of shareholding. In addition, the Companies Act 1993 does not permit the issue of shares having a nominal or par value. It is also desirable that the application of certain other provisions of the Companies Act 1993 be modified or excluded in relation to co-operative companies.

As part of its consideration of the company law reform package, the Justice and Law Reform Select Committee considered that the position of co-operative companies should be dealt with in separate legislation and tabled its report on the matter in the House on 4 June 1991: see *Hansard*, 1991, Vol. 515, pp. 2030 to 2031, and 1991-93 Appendix to the Journals of the House of Representatives I. 8, pp. 8 to 11.

The Bill is in 3 Parts. *Part I* of the Bill relates to the registration of co-operative companies and contains provisions of general application to co-operative companies. *Part II* relates to the registration of co-operative companies as co-operative dairy companies. *Part III* contains provisions relating to repeals and amendments to other Acts.

Clause 1 relates to the Short Title and commencement of the Bill. Except for clauses 42 and 43, the Bill will come into force on a date to be appointed by Order in Council. *Clauses 42* and *43* come into force on 30 June 1997 being the date by which all companies incorporated under the Companies Act 1955 must reregister. *Clause 42* repeals the existing co-operative companies Acts and *clause 43* is a savings provision that relates to the repeal.

Clause 2 defines terms used in the Bill. The principal terms defined are "company", "co-operative activity" and "co-operative company".

Clause 3 defines the term "transacting shareholder".

Clause 4 provides that the Bill binds the Crown.

PART I

REGISTRATION OF CO-OPERATIVE COMPANIES

Clause 5 provides for the registration of companies incorporated under the Companies Act 1993 as co-operative companies. On receipt of a properly completed application for registration, the Registrar of Companies, if satisfied that the company is a co-operative company, must register the company as such and issue a certificate of registration. The certificate is conclusive evidence that the requirements of the Act relating to registration have been complied with and that on and from the date stated in the certificate the company is registered as a co-operative company.

Clause 6 provides for an application for registration as a co-operative company to be made together with an application for the registration of a company under the Companies Act 1993.

Clause 7 provides that an existing co-operative company registered as such under the Co-operative Dairy Companies Act 1949, the Co-operative Companies Act 1956, the Co-operative Freezing Companies Act 1960, or the Co-operative Forestry Companies Act 1978 may apply to be registered as a co-operative

company under the Bill at the same time as it applies to be reregistered as a company under the Companies Act 1993.

Clause 8 provides that an existing company registered under the Companies Act 1955 may apply to be registered as a co-operative company under the Bill at the same time as it applies to be reregistered as a company under the Companies Act 1993.

Clause 9 requires the board of directors of a co-operative company, not later than the date on which the company's annual report is prepared or is required to be prepared, to resolve whether or not the company has, during the accounting period to which the report relates or would relate if it had been prepared, been a co-operative company. A director who does not vote in favour of the resolution must sign a certificate stating his or her reasons. The company's annual report and annual return must state the date and terms of the resolution, the names of any directors who did not vote in favour of the resolution, and their reasons. If the annual return does not contain this information, the Registrar is required to give the board notice to that effect and the board must file an amended return. A failure to do so is a ground under *clause 10* for cancellation of registration as a co-operative.

Clause 10 empowers the Registrar to cancel the registration of a company as a co-operative company if—

- (a) The Registrar is satisfied on reasonable grounds that the company is not, or has ceased to be, a co-operative company; or
- (b) The board has not complied with a notice under *clause 9*.

Clause 11 provides for cancellation of registration as a co-operative on the application of the company.

Clause 12 provides that the cancellation of registration takes effect when a memorandum is entered on the register.

Clause 13 prohibits a company from being or remaining registered under the Companies Act 1993 by a name that includes the word "co-operative" unless it is also registered under the Bill. The clause requires the Registrar in such a case to alter the name of the company on the New Zealand register. If the Registrar believes on reasonable grounds that the name of the company as altered would not be a name that could be reserved under section 22 of the Companies Act 1993, the Registrar may require the company to change its name under section 24 of that Act.

Clause 14 provides that, notwithstanding section 38 of the Companies Act 1993 (which expressly prohibits the issue of shares having a nominal value), shares in co-operative companies may be issued with a nominal value. The nominal value must be specified in the constitution.

Clause 15 provides that the consideration for the issue of shares having a nominal value must be the nominal value of the shares.

Clause 16 relates to the surrender of shares. Subject to the constitution of the company and to the company satisfying the solvency test under the Companies Act 1993, a shareholder may surrender shares having a nominal value and the company may require the surrender of shares having a nominal value.

Clause 17 applies sections 52 (4) and 56 of the Companies Act 1993 to the surrender of shares. Section 52 (4) defines the terms "debts" and "liabilities" for the purposes of section 56 of that Act. Section 56 relates to the recovery of

distributions from shareholders and directors in cases where the solvency test has not been satisfied.

Clause 18 provides for the surrender of shares by shareholders in 3 cases.

Firstly, a shareholder who has ceased to be a transacting shareholder may offer to surrender shares having a nominal value and, subject to *clause 16*, the board is authorised to accept the surrender.

Second, the personal representative of the estate of a deceased shareholder may, where the personal representative has ceased to be a transacting shareholder, surrender shares in the estate having a nominal value and, subject to *clause 16*, the board is required to accept the surrender.

Third, where a shareholder—

- (a) Has not been a transacting shareholder for the preceding 5 years or for any other period determined by the board or specified in the constitution; or
- (b) Has disposed of, or changed the use of, assets or property with the result that the shareholder does not have the capacity to continue as a transacting shareholder,—

the shareholder may surrender shares having a nominal value and, subject to *clause 16*, the board is required to accept the surrender.

A surrender of shares under this clause takes effect on the date on which the board resolves to accept it.

Clause 19 provides for the compulsory surrender of shares.

A shareholder may be required to surrender shares having a nominal value in a co-operative company in the following cases.

Firstly, if authorised by its constitution, the company may require the surrender where—

- (a) The shareholder has ceased to be a transacting shareholder; or
- (b) The shareholder has not complied with any contractual requirements relating to transactions between the company and the shareholder; or
- (c) The constitution permits the board to require the surrender on grounds specified in the constitution, the surrender is on one of those grounds, and the board has resolved that the surrender is in the best interests of the company.

Second, the board may require the surrender where the shareholder has not been a transacting shareholder for the immediately preceding 12 months.

Third, if authorised by the constitution, the board may require the shareholder to surrender any shares having a nominal value in excess of the number of shares the shareholder is required to hold under the constitution and determined on the basis of transactions with the company.

A surrender of shares under this clause takes effect a month after notice requiring the surrender is given to the shareholder.

Clause 20 provides that the consideration payable by the company for the surrender of shares under *clause 18* or *clause 19* is to be determined in accordance with the following rules:

- (a) The consideration payable is the nominal value of the shares or, if it is less than the nominal value, the amount paid up on the shares;
- (b) If the constitution of the company contains a procedure for determining the consideration payable, the consideration is the amount determined under that procedure if that amount is less than the nominal value of the shares;
- (c) The shareholder and the company may agree on the amount of the consideration payable where the amount agreed is less than the nominal value of the shares.

If either the company or the shareholder objects to the amount of the consideration determined under the procedure set out in the constitution, the matter may be referred to arbitration.

In determining the amount of the consideration under the procedure no account is to be taken of any circumstances personal to the shareholder or, where the shares have been surrendered under *clause 18* of the Bill, of the shareholder's purpose in surrendering the shares.

Clause 21 provides that shares that are surrendered under *clause 18* or *clause 19* are deemed to be cancelled immediately the surrender takes effect.

Clauses 22, 23, and 24 authorise co-operative companies to hold shares that have been surrendered as treasury stock, and are to the same effect as sections 67A, 67B, and 67C, of the Companies Act 1993 respectively.

Clause 22 provides that shares that have been surrendered are not deemed to have been cancelled and are to be held by the company in itself if—

- (a) The constitution permits the company to hold its own shares; and
- (b) The board resolves that the shares are not to be cancelled on surrender; and
- (c) The number of shares surrendered together with any shares of the same class held by the company under the clause does not exceed 5 percent of the shares of that class previously issued.

Clause 23 provides that the rights and obligations attaching to shares that the company holds in itself cannot be exercised by or against the company.

Clause 24 authorises the company to reissue shares that it holds in itself.

Clause 25 provides that nothing in *clauses 16 to 21* prevents the acquisition or redemption of shares in a co-operative company under the Companies Act 1993. This means that the acquisition and redemption provisions of the Companies Act 1993 can still be used by co-operative companies.

Clause 26 provides for the forfeiture of shares of untraceable shareholders.

The clause applies to a shareholder who, for a period of not less than 2 years prior to the publication of notice of intention to forfeit the shares,—

- (a) Has not resided at his or her last known address; and
- (b) Has not responded to communications from the company; and
- (c) Does not have an agent; and
- (d) Has not presented any of the company's cheques or claimed payment of any money owing to him or her by the company.

The company is required to give public notice of its intention to forfeit the shares.

If, within 4 years after the shares are forfeited, the former holder establishes that he or she was the holder at the time of forfeiture, the board must pay to that person the amount that would have been payable if the shares had been surrendered under *clause 18*.

The clause is similar to section 16 of the Co-operative Dairy Companies Act 1949 except for the fact that the period referred to in that section is 5 rather than 2 years.

Clause 27 modifies the application of certain provisions of the Companies Act 1993 to co-operative companies.

Clause 28 authorises co-operative companies to make payments to shareholders based on the level of transactions and excludes the application of section 53 (2) (b) of the Companies Act 1993 in cases where those payments are distributions under that Act. Section 53 (2) (b) prohibits the payment of dividends unless the payment

is made in respect of all shares in the same class and is of the same amount in respect of each share in the class.

Clause 29 empowers the Governor-General by Order in Council to exempt a co-operative company from compliance with sections 209 and 210 of the Companies Act 1993.

Section 209 requires the board of a company to send an annual report to the company's shareholders except shareholders who elect not to receive annual reports.

Section 210 requires the board to send the company's audited financial statements to those shareholders electing not to receive the annual report.

It is envisaged that this exemption power will be used in cases where a co-operative company with a large number of shareholders holding shares in the company on a nominal basis would be faced with significant costs in providing those shareholders with copies of its annual report and accounts. An exemption can be granted on terms and conditions so as to enable alternative methods of disclosure to be substituted.

Clause 30 provides that, unless the constitution of the company provides otherwise, only the transacting shareholders in a co-operative company have voting rights.

PART II

SPECIAL PROVISIONS APPLYING TO CO-OPERATIVE DAIRY COMPANIES

Clause 31 defines terms used in Part II.

Clause 32 provides that a co-operative company the principal activities of which are, and are stated in its constitution as being, all or any of the following:

- (a) The manufacture of butter, cheese, dried milk, casein, or any other product derived from milk or milksolids supplied by its shareholders; or
- (b) The sale of milk or milksolids supplied by its shareholders; or
- (c) The collection, treatment, and distribution for human consumption of milk or cream supplied by its shareholders,—

may apply to be registered as a co-operative dairy company.

Clause 33 provides that an application for registration as a co-operative dairy company may be made together with an application for registration as a company under the Companies Act 1993.

Clause 34 provides that an existing co-operative company may apply for registration as a co-operative dairy company at the same time as it applies for reregistration under the Companies Act 1993.

Clause 35 provides that a company incorporated under the Companies Act 1955 may apply for registration as a co-operative dairy company at the same time as it applies for reregistration as a company under the Companies Act 1993.

Clause 36 requires the constitution of a co-operative dairy company to provide that the supply of dairy produce by any person to the company is to be treated as an application by that person to become a shareholder in the company.

Clause 37 provides for the compulsory issue of shares in co-operative dairy companies.

Subclause (1) provides that an alteration to the constitution of a co-operative dairy company requiring a transacting shareholder to acquire more shares than the number of shares already held binds all transacting shareholders.

Subclause (2) provides that a shareholder who votes against the resolution altering the constitution is not required to acquire more than 50 percent of the shares that the shareholder would have been required to hold in respect of the lowest level of supply during the preceding 5 years.

Subclause (3) provides that the exception in *subclause (2)* to the compulsory acquisition principle in *subclause (1)* does not apply where the resolution requires all transacting shareholders to acquire more than 50 percent of the number of shares that they would have been required to hold in respect of the lowest level of supply during the preceding 5 years and the resolution is passed by a 90 percent majority.

A shareholder who votes against a resolution referred to in *subclause (3)* is entitled to surrender his or her shares to the company under *clause 18* of the Bill.

The clause is similar in effect to section 8 of the Co-operative Dairy Companies Act 1949.

Clause 38 provides that, subject to the constitution of the company, a supplying shareholder of a co-operative dairy company may transfer shares to a sharemilker.

Clause 39 provides that where the constitution of a co-operative dairy company contains the terms of any contract between the company and its shareholders, any alteration to the terms and conditions of the contract in the constitution is binding on all shareholders.

The clause is also similar in effect to section 8 (1) of the Co-operative Dairy Companies Act 1949.

Clause 40 provides that Part I of the Bill applies to co-operative dairy companies subject to the provisions of Part II.

PART III

MISCELLANEOUS PROVISIONS

Clause 41 gives a right of appeal to the High Court against a decision of the Registrar under the Bill in the same terms as section 370 of the Companies Act 1993.

Clause 42 authorises the making of regulations.

Clause 43, repeals, the Co-operative Dairy Companies Act 1949, the Co-operative Companies Act 1956, the Co-operative Freezing Companies Act 1960, and the Co-operative Forestry Companies Act 1978 and revokes the Orders in Council made under the Co-operative Companies Act 1956. The clause comes into force on 30 June 1997 which is the end of the transitional period during which existing companies (including co-operative companies) are required to reregister under the Companies Act 1993.

Clause 44 is a savings provision the effect of which is to keep in force the Acts and Orders in Council to which *clause 42* applies in relation to any co-operative company that has not been reregistered by 30 June 1997.

Clause 45 amends the Acts specified in the Second Schedule to the Bill.

Clause 47 re-enacts with modifications, as *sections 68A* and *68B* of the Forests Act 1949, sections 17 and 18 of the Co-operative Forestry Companies Act 1978. Sections 17 and 18 provide for the registration against the title to land of supply contracts entered into by co-operative forestry companies. The new *sections 68A* and *68B* are not limited to supply contracts entered into by co-operative forestry

companies but will apply to contracts for the supply of forest produce entered into by any person.

A supply contract will also be capable of registration where no certificate of title to the land in question has been issued by constituting the contract a separate folium of the register. The new sections also provide for the registration of partial discharges of supply contracts.

Clause 48 amends section 72 of the Forests Act 1949 to enable regulations to be made prescribing forms of supply contract and providing for other matters relating to the registration of supply contracts. At present, both the form of supply contract and the form of discharge of a supply contract are prescribed by the Co-operative Forestry Companies Act 1978.

Clause 49 consequentially amends the Co-operative Forestry Companies Act 1978.

Clauses 51 to 60 make a number of amendments to the Dairy Board Act 1961.

The majority of the amendments change the expression "milkfat", where it is used in the Act, to "milksolids". The other amendments are consequential.

CO-OPERATIVE COMPANIES

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A BILL INTITULED

An Act to reform the law relating to co-operative companies and, in particular—

- (a) To reaffirm the value of the co-operative company as a means of facilitating its shareholders carrying on business on a mutual basis; and 5
- (b) To provide for the registration of co-operative companies and regulate the relationship between co-operative companies and their shareholders; and 10
- (c) To provide for the registration of existing co-operative companies under this Act; and
- (d) To modify the application of the Companies Act 1993 to co-operative companies registered under this Act— 15

and to repeal the Co-operative Companies Act 1956 and certain other Acts

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Co-operative Companies Act 1995. 20

(2) Except as provided in sections 43 (3) and 44 (4) of this Act, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. Interpretation—(1) In this Act, unless the context otherwise requires,— 25

“Company” has the same meaning as in section 2 of the Companies Act 1993:

“Co-operative activity”, in relation to a company, means one or more of the following activities:

(a) Supplying or providing the shareholders of the company, whether directly or through a subsidiary, with goods or services, or both:

5 (b) Supplying or providing the shareholders of the company's holding company with goods or services, or both:

(c) Processing or marketing, whether directly or through a subsidiary, goods or services, or both, supplied or provided by its shareholders:

10 (d) Processing or marketing goods or services, or both, supplied or provided by the shareholders of its holding company:

(e) Entering into any other commercial transaction, whether directly or through a subsidiary, with the shareholders of the company:

15 (f) Entering into any other commercial transaction with the shareholders of its holding company:

(g) Supplying or providing goods or services, or both, that are ancillary to, or that otherwise facilitate, the carrying on by the company or its holding company of a co-operative activity referred to in any of **paragraphs (a) to (f)** of this definition:

“Co-operative company” means—

25 (a) A company, not being a holding company, the principal activity of which is, and is stated in its constitution as being, a co-operative activity and in which not less than 60 percent of the voting rights are held by transacting shareholders:

30 (b) A holding company where—

(i) The principal activity of the company is, and is stated in its constitution as being, a co-operative activity and in which not less than 60 percent of the voting rights are held by transacting shareholders; and

35 (ii) The principal activity of its subsidiary or, if it has more than one subsidiary, of at least one of its subsidiaries, is, and is stated in its constitution as being, a co-operative activity:

40 (c) A subsidiary of a holding company that is a co-operative company by virtue of **paragraph (b)** of this definition, being a subsidiary the principal activity of which is, and is stated in its constitution as being, a co-operative activity:

“Existing company” means a body corporate registered under Part II or Part VIII or Part X of the Companies Act 1955, or under the Companies Act 1933, the Companies Act 1908, the Companies Act 1903, the Companies Act 1882, or the Joint Stock Companies Act 1860: 5

“Existing co-operative company” means an existing company registered under the Co-operative Dairy Companies Act 1949, the Co-operative Companies Act 1956, the Co-operative Freezing Companies Act 1960, or the Co-operative Forestry Companies Act 1978. 10

(2) For the purposes of **subsection (1)** of this section,—

(a) A company is a subsidiary of another company if—

(i) That other company holds not less than 60 percent of the shares in the company that carry the right to vote at meetings of the company; or 15

(ii) The company is a subsidiary of a company that is that other company’s subsidiary:

(b) A company is another company’s holding company if that other company is its subsidiary. 20

(3) For the purposes of **subsection (2)** of this section, the provisions of section 8 of the Companies Act 1993 shall apply in determining whether one company is the subsidiary of another company. 25

(4) Any term or expression that is not defined in this Act, but that is defined in the Companies Act 1993, has the meaning given to it by the Companies Act 1993.

3. Meaning of “transacting shareholder”—For the purposes of this Act, a person is a transacting shareholder of a co-operative company if, having regard to the nature of the co-operative activity carried on by the company, the person— 30

(a) Supplies or provides goods or services to the company or to a subsidiary of the company or who, having ceased to supply or provide goods or services to the company or the subsidiary, is, in the opinion of the directors of the company on reasonable grounds, likely to resume doing so: 35

(b) Purchases or acquires goods or services from the company or from a subsidiary of the company or who, having ceased to purchase or acquire goods or services from the company or the subsidiary, is, in the opinion of the directors of the company on reasonable grounds, likely to resume doing so: 40

- 5 (c) Enters into other commercial transactions with the company or with a subsidiary of the company or who, having ceased to enter into other commercial transactions with the company or the subsidiary, is, in the opinion of the directors of the company on reasonable grounds, likely to resume doing so:
- (d) Has incurred an obligation to do any act referred to in any of paragraphs (a) or (b) or (c) of this definition:
- 10 (e) In the case of a subsidiary that is a co-operative company within the meaning of paragraph (c) of the definition of that term, is the holding company of that subsidiary.

4. Act to bind the Crown—This Act binds the Crown.

PART I

REGISTRATION OF CO-OPERATIVE COMPANIES

- 15 **5. Registration of co-operative companies**—(1) An application for the registration of a company as a co-operative company under this Act must be sent or delivered to the Registrar and must be—
- 20 (a) In the prescribed form; and
- (b) Signed by a person acting with the express or implied authority of the company; and
- (c) Accompanied by a statutory declaration made by each director stating that, in the opinion of the director, the company is a co-operative company within the meaning of this Act and the grounds for that opinion; and
- 25 (d) Accompanied by such other documents as may be prescribed.
- (2) Every application must be authorised by the constitution of the company or, by a special resolution of the shareholders of the company, and, where the application is authorised by a special resolution, the application must be accompanied by a copy of the resolution.
- 30 (3) As soon as the Registrar receives a properly completed application for registration of a company as a co-operative company, the Registrar must, if satisfied that the company is a co-operative company,—
- 35 (a) Register the company as a co-operative company under this Act; and
- 40 (b) Issue a certificate of registration.
- (4) If the Registrar declines to register a company as a co-operative company on the ground that the Registrar is not satisfied that the company is a co-operative company, the

Registrar must give notice in writing to the company setting out the Registrar's reasons.

(5) A certificate issued under this section is conclusive evidence that—

- (a) All the requirements of this Act as to registration have been complied with; and
- (b) On and from the date of registration stated in the certificate, the company is registered under this Act.

6. Simultaneous registration under Companies Act 1993 and this Act—(1) An application for registration of a company as a co-operative company under this Act may be sent or delivered to the Registrar together with an application for registration of a company under section 12 of the Companies Act 1993.

(2) An application under **subsection (1)** of this section must be—

- (a) In the prescribed form; and
- (b) Signed by a person acting with the express or implied authority of the persons named in the application under section 12 of the Companies Act 1993 as directors of the company; and

(c) Accompanied by a statutory declaration made by each person named in the application under section 12 of the Companies Act 1993 as a director stating that, in the opinion of that person, the company will, upon registration, be a co-operative company within the meaning of this Act and the grounds for that opinion.

(3) Every application must be authorised by the proposed constitution of the company or by a resolution of such number of persons who consent to become shareholders of the company and who will hold, in aggregate, not less than 75 percent of the shares to be issued by the company and, where the application is authorised by that resolution, the application must be accompanied by a copy of the resolution.

(4) As soon as the Registrar receives a properly completed application for registration of a company as a co-operative company under **subsection (1)** of this section, the Registrar must, upon registration of the company under the Companies Act 1993 and if satisfied that the company, will, upon that registration, be a co-operative company,—

- (a) Register the company as a co-operative company under this Act; and
- (b) Issue a certificate of registration.

(5) If the Registrar declines to register a company as a co-operative company on the ground that the Registrar is not

satisfied that the company will, upon registration under the Companies Act 1993, be a co-operative company, the Registrar must give notice in writing to the applicant setting out the Registrar's reasons.

- 5 (6) A certificate issued under this section is conclusive evidence that—
- (a) All the requirements of this Act as to registration have been complied with; and
 - 10 (b) On and from the date of registration stated in the certificate, the company is registered under this Act.

7. Simultaneous registration of existing co-operative companies—(1) Every existing co-operative company may apply for registration as a co-operative company under this Act at the same time as it applies, under the Companies
15 Reregistration Act 1993, for reregistration under the Companies Act 1993.

- (2) An application under **subsection (1)** of this section must be—
- (a) In the prescribed form; and
 - 20 (b) Signed by a person acting with the express or implied authority of the company; and
 - (c) Accompanied by a statutory declaration made by each director stating that, in the opinion of the director, the company is a co-operative company within the meaning of this Act and the grounds for that opinion.
- 25 (3) Every application must be accompanied by a copy of a special resolution of the members of the company authorising the making of the application.
- (4) As soon as the Registrar receives a properly completed application for registration of an existing co-operative company as a co-operative company under **subsection (1)** of this section, the Registrar must, upon reregistration of the company under the Companies Act 1993 and if satisfied that the company will, upon that reregistration, be a co-operative company—
- 30 (a) Register the company as a co-operative company under this Act; and
 - 35 (b) Issue a certificate of registration.
- (5) If the Registrar declines to register an existing co-operative company as a co-operative company on the ground that the Registrar is not satisfied that the company will, upon
40 reregistration under the Companies Act 1993, be a co-operative company, the Registrar must give notice in writing to the applicant setting out the Registrar's reasons.
- (6) A certificate issued under this section is conclusive evidence that—

- (a) All the requirements of this Act as to registration have been complied with; and
- (b) On the date of registration stated in the certificate, the company ceased to be an existing co-operative company; and
- (c) On and from the date of registration stated in the certificate, the company is registered under this Act.

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8. Registration of existing companies—(1) An application for registration of an existing company as a co-operative company under this Act may be sent or delivered to the Registrar together with an application, under the Companies Reregistration Act 1993 for reregistration of the company as a company under the Companies Act 1993.

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(2) An application under **subsection (1)** of this section must be—

- (a) In the prescribed form; and
- (b) Signed by a person acting with the express or implied authority of the company; and
- (c) Accompanied by a statutory declaration made by each director stating that, in the opinion of the director, the company is a co-operative company within the meaning of this Act and the grounds for that opinion.

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(3) Every application must be accompanied by a copy of a special resolution of the members of the company authorising the making of the application.

(4) As soon as the Registrar receives a properly completed application for registration of an existing company as a co-operative company under **subsection (1)** of this section, the Registrar must, upon reregistration of the company under the Companies Act 1993 and if satisfied that the company will, upon that reregistration, be a co-operative company,—

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(a) Register the company as a co-operative company under this Act; and

(b) Issue a certificate of registration.

(5) If the Registrar declines to register an existing company as a co-operative company on the ground that the Registrar is not satisfied that the company will, upon reregistration under the Companies Act 1993, be a co-operative company, the Registrar must give notice in writing to the applicant setting out the Registrar's reasons.

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(6) A certificate issued under this section is conclusive evidence that—

40

- (a) All the requirements of this Act as to registration have been complied with; and

(b) On and from the date of registration stated in the certificate, the company is registered under this Act.

9. Annual resolution by directors of co-operative company—

5 Act must, not later than—

(a) The date on which the annual report of the company is prepared under section 208 of the Companies Act 1993; or

10 (b) The date by which the annual report of the company is required to be prepared under that section,—
whichever is the earlier, resolve whether or not, in the opinion of the board, the company has, throughout the accounting period to which the report relates or would relate, as the case may be, been a co-operative company.

15 (2) The resolution must set out in full the reasons for the directors' opinion.

(3) Every director who does not vote in favour of the resolution must sign a certificate stating his or her reasons.

20 (4) The board of the company must ensure that there is attached to the annual report for, and the annual return of, the company, a statement setting out—

(a) The date and terms of the resolution; and

(b) The name of any director who did not vote in favour of the resolution and the director's reasons.

25 (5) If the annual return of the company does not comply with **subsection (4)** of this section, the Registrar must, as soon as practicable after receiving the return, give notice in writing to the board of the company stating that the annual return does not comply and the board must, within 30 working days after
30 receiving the notice, send an amended annual return that complies with that subsection to the Registrar.

(6) The board of the company must, forthwith after receiving a notice under **subsection (5)** of this section, send a copy of the notice to every shareholder of the company.

35 (7) Every director who fails to comply with **subsection (3)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

40 (8) If the board of a company fails to comply with **subsection (5)** of this section, every director of the company commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(9) It is a defence to a director charged with an offence under **subsection (8)** of this section if the director proves that—

- (a) The board took all reasonable and proper steps to ensure that the requirements of **subsection (5)** of this section would be complied with; or
- (b) He or she took all reasonable and proper steps to ensure that the board complied with the requirements of that subsection; or 5
- (c) In the circumstances he or she could not reasonably have been expected to take steps to ensure that the board complied with the requirements of that subsection.

10. Registrar may cancel registration—(1) Subject to **subsection (2)** of this section, the Registrar may cancel the registration of a company under this Act if— 10

- (a) The Registrar is satisfied on reasonable grounds that the company is not, or has ceased to be, a co-operative company; or 15
- (b) The board of the company has failed to comply with **section 9 (5)** of this Act.
- (2) The Registrar must not exercise the power conferred by **subsection (1)** of this section unless the Registrar—
- (a) Has given to the company not less than 30 working days notice in writing of the fact that the Registrar intends to consider exercising the power and the grounds for doing so; and 20
- (b) Considers any representations made by the company or any shareholder of the company. 25
- (3) The board of the company must, forthwith after receiving a notice under **subsection (2)** of this section, send a copy of the notice to every shareholder of the company.

Cf. 1956, No. 18, s. 3 (5)

11. Cancellation of registration at request of company—(1) A company may apply to the Registrar to cancel the registration of the company under this Act. 30

- (2) Every application must be—
- (a) In the prescribed form; and
- (b) Signed by a person acting with the express or implied authority of the company. 35
- (3) Every application must be authorised by a special resolution of the shareholders of the company and must be accompanied by a copy of the resolution.
- (4) The Registrar must, not less than 30 days after receiving a properly completed application under this section, cancel the registration of the company under this Act. 40

12. Provisions relating to cancellation of registration—

5 (1) The cancellation of the registration of the company takes effect on the entry by the Registrar on the New Zealand register of a memorandum cancelling the registration of the company as a co-operative company.

(2) The Registrar must, forthwith after cancelling the registration of the company, give notice in writing of the cancellation to the company.

13. Use of word “co-operative” in name of company—

10 (1) No company may be, or remain, registered under the Companies Act 1993 by a name that includes the word “co-operative” unless the company is also registered under this Act.

15 (2) Subject to **subsection (3)** of this section, where a company registered under the Companies Act 1993 is not, by virtue of **subsection (1)** of this section, entitled to remain registered under that Act by a name that includes the word “co-operative”, the Registrar must alter the New Zealand register by removing the word “co-operative” from the name of the company and issue a certificate of incorporation for the company recording its new name.

20 (3) If the Registrar believes on reasonable grounds that if the name of the company were altered under **subsection (2)** of this section, the name would not be a name that could be reserved under section 22 of the Companies Act 1993, the Registrar may serve notice on the company under section 24 of that Act to change its name and the provisions of that section shall apply accordingly.

25 (4) In this section, the word “co-operative” includes any abbreviation of that word.

30 Cf. 1956, No. 18, s. 11

14. Shares may have nominal value—(1) Notwithstanding section 38 of the Companies Act 1993, shares in a company registered under this Act may have a nominal value and different classes of shares may have different nominal values.

35 (2) The nominal value of shares or any class of shares in a company registered under this Act shall be specified in the constitution of the company.

(3) The constitution of the company may, with the prior approval of the board, be amended by—

40 (a) Altering the nominal value of shares or any class of shares in the company; or

(b) Removing any provision that specifies the nominal value of shares or any class of shares in the company.

(4) The constitution of a company registered under this Act may, by ordinary resolution of the shareholders of the company, be amended by subdividing or consolidating shares having a nominal value.

15. Consideration for issue of shares having nominal value—The consideration for the issue of shares or any class of shares in a company registered under this Act having a nominal value must be the nominal value of the shares or class of shares. 5

16. Surrender of shares having nominal value— (1) Subject to this section and to the constitution of the company, a company registered under this Act— 10

(a) May, under **section 18** of this Act, accept the surrender of all or any of the shares in the company having a nominal value held by a shareholder: 15

(b) May, under **section 19** of this Act, require a shareholder in the company to surrender all or any of the shares in the company having a nominal value held by that shareholder.

(2) The shares that are surrendered may be paid for out of the assets of the company. 20

(3) A company must not—

(a) Accept the surrender of any shares under **section 18** of this Act; or

(b) Require, the surrender of any shares under **section 19** of this Act,— 25

unless the board of the company has resolved that the company will, immediately after the surrender, satisfy the solvency test.

(4) The directors who vote in favour of the surrender must sign a certificate stating that, in their opinion, the company will immediately after the surrender, satisfy the solvency test and the grounds for that opinion. 30

(5) If, after the passing of the resolution and before the shares are surrendered, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the surrender, satisfy the solvency test, any surrender of the shares is to be treated as a distribution that is deemed not to have been authorised and the provisions of subsections (3) and (5) of section 56 of the Companies Act 1993 shall apply with such modifications as may be necessary. 40

(6) Every director who fails to comply with **subsection (4)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

5 **17. Application of Companies Act 1993 to surrender of shares**—(1) Section 52(4) of the Companies Act 1993 shall apply to a surrender of shares under this Act.

(2) Section 56 of the Companies Act 1993 shall apply, with such modifications as may be necessary, to the surrender of shares under this Act as if the surrender was a distribution.

10 (3) Nothing in sections 58 to 67 and 68 to 75 of the Companies Act 1993 (which relate to the acquisition by a company of its own shares) applies to the surrender of shares under this Act.

15 **18. Surrender of shares at option of shareholder**—(1) A shareholder of a company registered under this Act who has ceased to be a transacting shareholder may offer to surrender to the company any shares in the company having a nominal value and held by that shareholder and, in any such case, but subject to **section 16** of this Act, the board of the company may
20 resolve to accept the surrender of the shares.

(2) The personal representative of the estate of a deceased shareholder of a company registered under this Act may, if the personal representative has ceased to be a transacting shareholder, surrender to the company any shares in the
25 company having a nominal value and comprised in the estate of the shareholder and, in any such case, but subject to **section 16** of this Act, the board of the company must resolve to accept the surrender.

30 (3) Where a shareholder of a company registered under this Act—

(a) Has not been a transacting shareholder during the immediately preceding 5 years or such other period as may be determined by the board of the company or specified in the constitution of the company; or

35 (b) Has disposed of, or changed the use of, the shareholder's property and other assets with the result that the shareholder does not have the capacity to continue to be a transacting shareholder,—

40 the shareholder may surrender to the company any shares in the company having a nominal value and held by that shareholder and, in any such case, but subject to **section 16** of this Act, the board of the company must resolve to accept the surrender.

(4) The surrender of shares under this section takes effect on the date on which the board of the company resolves to accept the surrender.

Cf. 1956, No. 18, s. 7

19. Surrender of shares at option of company— 5

(1) Subject to **section 16** of this Act, a company registered under this Act may, if it is expressly authorised by its constitution to do so, require any shareholder of the company to surrender to the company any shares in the company having a nominal value and held by that shareholder if— 10

- (a) The shareholder has ceased to be a transacting shareholder; or
- (b) The shareholder has failed to comply with requirements relating to transactions with the company contained in any contract between the company and the shareholder; or 15
- (c) The constitution of the company permits the board to require the surrender of the shares on grounds specified in the constitution; and
 - (i) The surrender of the shares is on a ground 20 specified in the constitution; and
 - (ii) The board has previously resolved that the surrender of the shares is in the best interests of the company.

(2) A resolution under **subsection (1) (c) (ii)** of this section must set out in full the reasons for the board's conclusions. 25

(3) The directors who vote in favour of a resolution required under **subsection (1) (c) (ii)** of this section must sign a certificate stating that the surrender is in the best interests of the company and may combine it with the certificate required under **section 16** of this Act. 30

(4) Subject to **section 16** of this Act, the board of a company registered under this Act may, at any time, require a shareholder who has not been a transacting shareholder throughout the immediately preceding period of 12 months to surrender to the company any or all of the shares in the company having a nominal value and held by that shareholder. 35

(5) Subject to **section 16** of this Act, the board of a company registered under this Act may, if permitted to do so by the constitution of the company, at any time, require a shareholder to surrender to the company all or any shares in the company having a nominal value and held by that shareholder in excess of the number of shares that the shareholder is required to hold in the company under the constitution and determined on 40

the basis of transactions with the company during such immediately preceding period as is specified in the constitution.

5 (6) The surrender of shares under this section takes effect at the expiration of a month after notice in writing requiring the surrender is given to the shareholder.

(7) Every director who fails to comply with **subsection (3)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Cf. 1956, No. 18, s. 8

10 **20. Consideration for surrender of shares**—(1) The consideration for the surrender of shares having a nominal value in a company registered under this Act shall be determined in accordance with the following rules:

15 (a) The consideration shall be the nominal value of the shares on the date on which the surrender takes effect or, if it is less than the nominal value of the shares, the amount paid up on the shares:

20 (b) If the constitution of the company includes a procedure for determining the consideration for the surrender of the shares then, if the consideration determined under the procedure is less than what the consideration would be if it were determined under **paragraph (a)**, the consideration for the surrender of the shares shall be the consideration determined under

25 the procedure:

(c) Despite **paragraphs (a)** and **(b)**, the company and the shareholder may agree on the consideration to be paid for the surrender of the shares if the amount agreed is less than what the consideration would be if

30 it were determined under **paragraph (a)**.

(2) If the constitution of a company registered under this Act includes a procedure for determining the consideration for the surrender of shares in the company, it must also make provision for the company or the shareholder, if either objects

35 to the consideration determined in accordance with the procedure, to have the matter determined by arbitration in accordance with the Arbitration Act 1908.

(3) In determining the consideration for the surrender of shares in the company under any procedure contained in the constitution of the company, no account is to be taken of

40 circumstances personal to the shareholder or, if the shares are surrendered under **section 18** of this Act, of the purpose of the shareholder in surrendering the shares.

(4) The consideration for the surrender of shares is an unsecured debt owed by the company to the shareholder and, unless the constitution otherwise provides, is payable on the date on which the surrender takes effect.

21. Cancellation of shares surrendered—(1) Subject to **sections 22 to 24** of this Act, shares that are surrendered under **section 18** or **section 19** of this Act are deemed to be cancelled immediately the surrender takes effect. 5

(2) On the cancellation of a share under this section,—

(a) The rights and privileges attached to that share expire; 10
and

(b) The share may be reissued in accordance with the Companies Act 1993.

Cf. 1993, No. 105, s. 66 (1), (3)

22. Co-operative company may hold its own shares— 15
(1) Shares in a company registered under this Act that are surrendered under **section 18** or **section 19** of this Act shall not be deemed to be cancelled under **section 21** of this Act if—

(a) The constitution of the company expressly permits the company to hold its own shares; and 20

(b) The board of the company resolves that the shares concerned shall not be cancelled on surrender; and

(c) The number of shares surrendered, when aggregated with shares of the same class held by the company pursuant to this section at the time of the surrender, does not exceed 5 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under **section 21** of this Act. 25

(2) Shares surrendered by a company pursuant to **section 18** or **section 19** of this Act that, pursuant to this section, are not deemed to be cancelled shall be held by the company in itself. 30

(3) A share that a company holds in itself under **subsection (2)** of this section may be cancelled by the board of the company resolving that the share is cancelled; and the share shall be deemed to be cancelled on the making of such a resolution. 35

Cf. 1993, No. 105, s. 67A; 1994, No. 82, s. 3

23. Rights and obligations of surrendered shares company holds in itself suspended—(1) The rights and obligations attaching to a share that a company holds in itself pursuant to **section 22** of this Act shall not be exercised by or against a company while it holds the share. 40

(2) Without limiting **subsection (1)** of this section, while a company holds a share in itself pursuant to **section 22** of this Act, the company shall not—

- (a) Exercise any voting rights attaching to the share; or
- 5 (b) Make or receive any distribution authorised or payable in respect of the share.

Cf. 1993, No. 105, s. 67B; 1994, No. 82, s. 3

24. Reissue of surrendered shares company holds in itself—(1) Subject to **subsection (2)** of this section, **section 15** of this
10 Act shall apply to the transfer of a share held by a company in itself as if the transfer were the issue of the share under section 42 or section 44 of the Companies Act 1993.

(2) Subject to **subsection (1)** of this section, the transfer of a share by a company in itself shall not be subject to any
15 provisions in this Act or the company's constitution relating to the issue of shares, except to the extent the company's constitution expressly applies those provisions.

(3) A company shall not grant an option to acquire a share it holds in itself or enter into any obligations to transfer such a
20 share where the company has received notice in writing of a takeover scheme under section 4 of the Companies Amendment Act 1963 or, in the case of a company that is a party to a listing agreement with a stock exchange, where the exchange makes a public release to the sharemarket that a
25 takeover offer for more than 20 percent of the company's shares is to be made.

Cf. 1993, No. 105, s. 67c; 1994, No. 82, s. 3

25. Acquisition and redemption of shares under Companies Act 1993 not affected—Nothing in **sections 16 to 21**
30 of this Act limits or affects the acquisition or redemption of shares under the Companies Act 1993 by a company registered under this Act.

26. Forfeiture of shares of untraceable shareholders—
35 (1) A company registered under this Act may, in accordance with this section, forfeit the shares of any shareholder of the company to whom this section applies.

(2) This section applies to a shareholder who, for a period of not less than 2 years immediately preceding the first
publication of a notice under **subsection (4)** of this section,—

- 40 (a) Has not resided at the address last known to the company; and

- (b) Has not responded to any communication from the company; and
- (c) Has no agent acting on his or her behalf; and
- (d) If cheques for money due from the company have been sent, or other money has become payable, to him or her, has not presented the cheques for collection or claimed payment of the money. 5
- (3) Before a company forfeits any shares under this section, the company must—
- (a) Comply with **subsection (4)** of this section; and 10
- (b) Take such other steps to locate the shareholder as are reasonable in the circumstances.
- (4) The company must publish in 2 consecutive issues of a newspaper circulating in the district in which the last known residence of the shareholder is situated and in the principal district in which the company carries on its business a notice stating— 15
- (a) The name of the shareholder:
- (b) The number of shares held by him or her:
- (c) The amount paid up on the shares: 20
- (d) That it is the intention of the company to forfeit the shares held by the shareholder after the date specified in the notice, not being a date that is earlier than 3 months after the first publication of the notice, unless, before that date, the shareholder, or his or her personal representatives or agent, or any other person who establishes on reasonable grounds that that person is entitled to the shares, notifies the company that the shares should not be forfeited. 25
- (5) If no person gives notice to the company under **subsection (4)** of this section within the time specified in the notice under that subsection, the board of the company may, by resolution, forfeit the shares. 30
- (6) Any shares forfeited under this section shall be deemed to be cancelled on the date the resolution is passed. 35
- (7) If, within 4 years after shares have been forfeited under this section, a person establishes on reasonable grounds that he or she was the holder of the shares immediately before the forfeiture, the board must pay to that person the amount that that person would have been entitled to have been paid if the shares had been surrendered to the company under **section 18** of this Act on the date on which they were forfeited. 40

(8) No interest is payable on any amount payable under subsection (7) of this section.

Cf. 1949, No. 22, s. 16

5 **27. Modified application of Companies Act 1993**—The application of the Companies Act 1993 to a company registered under this Act is subject to the following modifications:

10 (a) The reference in section 43 (1) to 10 working days shall, in the case of any issue of shares having a nominal value, be construed as a reference to 20 working days:

15 (b) Section 50 does not apply in relation to the issue of shares having a nominal value if the shares are issued to a person who already holds shares in the company having a nominal value:

 (c) For the purposes of section 55 (2) (b), transacting shareholders are shareholders of the same class:

20 (d) Section 55 does not apply to discounts offered to transacting shareholders in respect of goods or services if discounts are offered in respect of like goods or services in the ordinary course of business by other persons:

 (e) Section 95 shall not apply:

25 (f) Where the board of a company agrees, under section 111 (2) (a), to the purchase of shares having a nominal value by the company, or arranges under section 111 (2) (b) for some other person to agree to purchase the shares, as the case may be, not being an agreement or arrangement that results from an alteration of the constitution of the company removing a power to register as a co-operative company under this Act, the price for the shares shall be determined in accordance with section 20 of this Act and sections 112 and 113 shall not apply:

30 (g) Sections 140 and 141 shall not apply in relation to any transaction or proposed transaction—

 (i) Between the company and a director of the company in his or her capacity as a transacting shareholder; or

40 (ii) Between the company and a transacting shareholder of which a director of the company is also a director:

 (h) Section 149 shall not apply in relation to the acquisition or disposition of shares or securities in a company by a

director of the company in his or her capacity as a transacting shareholder:

- (i) Section 175 shall not apply in relation to any act or omission of the company that is required or authorised by this Act: 5
- (j) The references in section 209 (1) and 210 (1) to 20 working days shall be construed as references to 10 working days:
- (k) Except in the case of a shareholder, other than a transacting shareholder, who gives notice in writing to the company that the shareholder wishes to be sent copies of the annual reports of the company under section 209 or copies of the financial statements of the company under section 210, the references in those sections to every shareholder shall be construed as references to every transacting shareholder: 10
15
- (l) In the case of a company that is registered under Part II of this Act, section 110 shall apply subject to **section 37** of this Act. 20

28. Payments to shareholders based on level of transactions—Unless the constitution of the company expressly provides otherwise, a company registered under this Act may make payments to its transacting shareholders calculated by reference to the levels of transactions between the company and those shareholders and, if it does and the payments are distributions, the company may make the payments notwithstanding section 53 (2) (b) of the Companies Act 1993. 25

29. Exemption from sections 209 and 210 of Companies Act 1993—The Governor-General may from time to time, by Order in Council, and on such terms and conditions as may be specified in the order, exempt a company registered under this Act from compliance with the provisions of sections 209 and 210 of, and paragraph (i) of the Fourth Schedule to, the Companies Act 1993. 30
35

30. Voting rights of shareholders—Notwithstanding section 36 of the Companies Act 1993, unless the constitution of the company expressly provides otherwise, only transacting shareholders of a company registered under this Act are entitled to vote on a resolution. 40

PART II

SPECIAL PROVISIONS APPLYING TO CO-OPERATIVE DAIRY
COMPANIES**31. Interpretation**—In this Part of this Act,—

5 “Co-operative dairy company” means a co-operative
company that is registered as a co-operative dairy
company under **section 32** of this Act:

“Occupier”, in relation to any land, means,—

10 (a) Where a person other than the owner of the
land has a right to occupy the land under any lease or
tenancy for a term of 12 months or more, that
person; and

(b) In every other case, the owner of the land:

15 “Sharemilker”, in relation to a supplying shareholder,
means a person who is engaged, otherwise than as a
servant under a contract of service, in the production
of milk or milksolids obtained from a dairy herd
owned or provided by that person on land occupied
by that shareholder:

20 “Supplying shareholder”, in relation to a co-operative
dairy company, means a transacting shareholder who
supplies the company, pursuant to the constitution of
the company or an agreement with the company,
with such quantity, as the company may from time
25 to time require, of milk or milksolids produced on
land of which the transacting shareholder is the
occupier.

32. Registration of co-operative dairy companies—(1) A
30 co-operative company, the principal activities of which are, and
are stated in its constitution as being, all or any of the
following:

(a) The manufacture of butter, cheese, dried milk, or casein,
or any other product derived from milk or milksolids
supplied to the company by its shareholders; or

35 (b) The sale to any person of the milk or milksolids so
supplied; or

(c) The collection, treatment, and distribution for human
consumption of milk or cream so supplied,—

40 may apply to the Registrar for registration under this Part of
this Act as a co-operative dairy company.

(2) The provisions of **section 5** of this Act shall apply, with such
modifications as may be necessary, in relation to an application
under this section.

33. Simultaneous registration under Companies Act 1993 and this Part of this Act—An application for registration of a company as a co-operative dairy company under this Part of this Act may be sent or delivered to the Registrar together with an application for registration of a company under section 12 of the Companies Act 1993 and, in any such case, the provisions of **section 6** of this Act shall apply, with such modifications as may be necessary, in relation to the application. 5

34. Simultaneous registration of existing co-operative companies—An existing co-operative company may apply for registration as a co-operative dairy company under this Part of this Act at the same time as it applies, under the Companies Reregistration Act 1993, for reregistration under the Companies Act 1993 and, in any such case, the provisions of **section 7** of this Act shall apply, with such modifications as may be necessary, in relation to the application. 10 15

35. Registration of existing companies—An application for registration of an existing company as a co-operative dairy company under this Part of this Act may be sent or delivered to the Registrar together with an application under the Companies Reregistration Act 1993 for reregistration of the company as a company under the Companies Act 1993 and, in any such case, the provisions of **section 8** of this Act shall apply, with such modifications as may be necessary, in relation to the application. 20 25

36. Additional requirement as to registration—The Registrar must not register a co-operative company as a co-operative dairy company under this Part of this Act unless the constitution of the company provides that the supply of dairy produce by any person to the company is to be treated as an irrevocable application by that person to become a shareholder in the company. 30

37. Compulsory issue of shares—(1) Notwithstanding section 101 of the Companies Act 1993, where a co-operative dairy company registered under this Part of this Act alters its constitution so as to require a transacting shareholder to hold more shares in the company than the number held on the date the alteration is made, the alteration shall, subject to **subsection (2)** of this section, bind that transacting shareholder and all other transacting shareholders. 35 40

(2) Subject to **subsection (3)** of this section, a transacting shareholder who did not vote in favour of the resolution altering the constitution is not required to hold, in addition to the number of shares held on the date the alteration is made, in excess of 50 percent of the number of shares that the shareholder would have been required to hold in respect of the lowest level of transactions with the company during the 5 financial years immediately preceding the passing of the resolution.

5
10 (3) Nothing in **subsection (2)** of this section applies in any case where—

(a) The resolution altering the constitution of the company requires all transacting shareholders to hold, in addition to the number of shares held on the date the alteration is made, in excess of 50 percent of the number of shares that those shareholders would have been required to hold in respect of the lowest level of transactions with the company during the 5 financial years immediately preceding the passing of the resolution; and

15
20 (b) The resolution is passed by a majority of not less than 90 percent of the shareholders entitled to vote and voting on the resolution.

(4) In any case to which **subsection (3)** of this section applies, a transacting shareholder who voted against the resolution may require the company to accept the surrender under **section 18** of this Act of all the shares held by that shareholder in the company.

25
30 (5) Nothing in this section requires a shareholder to hold in excess of—

(a) The number of shares that, immediately before the passing of the resolution, the shareholder was required to hold under the constitution of the company; and

35 (b) The number of shares that the shareholder would be required to hold as a result of the passing of the resolution.

(6) Any alteration to the constitution of the company made pursuant to **subsection (1)** of this section shall be binding on every person who becomes a transacting shareholder after the passing of the resolution.

40 Cf. 1949, No. 22, s. 8; 1956, No. 19, s. 2 (1), (2); 1970, No. 140, s. 3 (2)

38. Transfer of shares to sharemilkers—Subject to the constitution of the company,—

- (a) A supplying shareholder of a co-operative dairy company registered under this Part of this Act may, in accordance with the constitution, transfer any or all of the shares in the company held by that shareholder to a sharemilker; and 5
- (b) The company must, in accordance with its constitution, treat a sharemilker to whom any such shares are transferred as if he or she were a supplying shareholder. 10

39. Alteration of terms of contract contained in constitution—Where the constitution of a co-operative dairy company registered under this Part of this Act contains or sets out the terms and conditions of any contracts between the company and the shareholders of the company or the members of any group or class of shareholders, any alteration of those terms or conditions in the constitution is binding on those shareholders or the members of that group or class, as the case may be. 15 20

Cf. 1949, No. 22, s. 8 (1); 1956, No. 19, s. 2 (1)

40. Application of Part I to co-operative dairy companies—Part I of this Act applies to every co-operative dairy company registered under this Part of this Act subject to the provisions of this Part of this Act. 25

PART III

MISCELLANEOUS PROVISIONS

Appeals

41. Appeals from Registrar's decisions—(1) A person who is aggrieved by an act or decision of the Registrar under this Act may appeal to the High Court within 15 working days after the date of the notification of the act or decision, or within such further time as the Court may allow. 30

(2) On hearing the appeal, the Court may approve the Registrar's act or decision or may give such directions or make such determination in the matter as the Court thinks fit. 35

Cf. 1993, No. 105, s. 370

Regulations

42. Regulations—The Governor-General may from time to time, by Order in Council, make regulations— 40

- (a) Prescribing forms for the purposes of this Act; and those regulations may require—
- (i) The inclusion in, or attachment to, forms of specified information or documents:
- 5 (ii) Forms to be signed by specified persons:
- (b) Providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

Repeals

- 10 **43. Repeal of Co-operative Companies Acts**—(1) The enactments specified in the **First** Schedule to this Act are hereby repealed.
- (2) The orders specified in the **Second** Schedule to this Act are hereby consequentially revoked.
- 15 (3) This section shall come into force on the close of the 30th day of June 1997.

- 44. Savings**—(1) In this section, “Co-operative Companies Act” means—
- 20 (a) The Co-operative Dairy Companies Act 1949:
- (b) The Co-operative Companies Act 1956:
- (c) The Co-operative Freezing Companies Act 1960:
- (d) The Co-operative Forestry Companies Act 1978:
- (2) Every Co-operative Companies Act shall, notwithstanding its repeal by **section 43 (1)** of this Act, continue in force and apply
- 25 in respect of—
- (a) Every co-operative company registered under that Act that has made an application for reregistration under the Companies Reregistration Act 1993 before the commencement of this section, but has not been
- 30 reregistered on the commencement of this section, and shall continue in force and apply until the company is so reregistered:
- (b) Every co-operative company registered under that Act that, immediately after the commencement of this
- 35 section, has not been reregistered or deemed to be reregistered under the Companies Reregistration Act 1993 and shall continue in force and apply to the company until the company is reregistered or deemed to be reregistered under that Act.
- 40 (3) Every Order in Council made under the Co-operative Companies Act 1956 shall, notwithstanding its revocation by **section 43 (2)** of this Act, continue in force and apply in respect of every co-operative company to which the order applies that is

registered under that Act to the same extent as that Act continues to apply to the company by virtue of **subsection (2)** of this section.

(4) This section shall come into force on the close of the 30th day of June 1997.

5

Amendments to Other Acts

45. Amendments to other Acts—The enactments specified in the **Second Schedule** to this Act are hereby amended in the manner indicated in that Schedule.

Amendments to Forests Act 1949

10

46. Sections to be read with Forests Act 1949—This section and the next **3 succeeding sections** shall be read together with and deemed part of the Forests Act 1949* (in those sections referred to as the principal Act).

*R.S. Vol. 23, p. 473

Amendments: 1993, No. 7; 1994, No. 33

47. New sections inserted—The principal Act is hereby amended by inserting, after section 68, the following sections:

15

“68A. **Supply contracts**—(1) In this section, ‘forest produce’ means trees and materials produced from trees.

“(2) Any person may enter into a contract (in this section referred to as a supply contract) with any other person, for the exclusive right to harvest, purchase, or sell or arrange for the harvesting, purchase, or sale of all or any part of the forest produce owned by that other person.

20

“(3) Where the owner or occupier of any land has entered into a supply contract, that contract may be registered against the title of that owner or occupier to the land to which the supply contract relates.

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“(4) No such contract shall be so registered unless notice has been given to every mortgagee and other person having a charge on any estate or interest in the land at the date of registration.

30

“(5) Where no certificate of title to the land has been issued, the District Land Registrar shall constitute the contract a separate folium of the register.

“(6) No supply contract shall be constituted a separate folium of the register unless there is endorsed on the contract a certificate by a registered surveyor to the effect that the land to which the contract relates is within the boundaries of a parcel of land identified on a plan lodged in the office of the Chief

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Surveyor or District Land Registrar for the district in which the land is situated.

5 “(7) For the purpose of effecting registration, a duplicate of the supply contract shall be lodged with the appropriate District Land Registrar and there shall be endorsed on or attached to the duplicate an application signed by all parties to the contract which shall—

10 “(a) Specify the land against which it is desired to register the supply contract or the land in relation to which it is desired to constitute the contract a separate folium of the register, as the case may be; and

15 “(b) Certify that the supply contract is one that may be registered under this section, that all notices have been given, and that the duplicate is a true copy of the original.

“(8) The District Land Registrar shall—

20 “(a) Enter a memorial of the supply contract upon the register against the title of the owner or occupier whose land is specified in the supply contract and upon the outstanding duplicate of the instrument evidencing title (if any) of the owner or occupier; or

“(b) Constitute the supply contract a separate folium of the register,—
as the case may be.

25 “(9) A memorial under **subsection 8(a)** of this section may sufficiently describe the contract as a supply contract under the Forests Act 1949.

30 “(10) Upon the expiration, termination, cancellation, or discharge as to the whole or any part of the land affected of a supply contract, a discharge in the prescribed form, executed by the parties to the contract, may be registered with the appropriate District Land Registrar, who shall enter an appropriate memorial upon the register against the title to the land or, if the contract constitutes a folium of the register,
35 against the contract as so constituted.

40 “(11) In the absence of a discharge in the prescribed form, the District Land Registrar, on application to him or her by the owner or occupier of the land affected or by any party to the execution of the supply contract, may, on being satisfied by such evidence as he or she considers adequate that the supply contract is no longer of any force or effect against the whole or any part of the land affected, cancel the registration of the supply contract as to the whole or part of the land, as the case may be.

“68B. **Effect of registration of supply contract**—(1) Any supply contract registered pursuant to **section 68A** of this Act shall burden the land against which it is registered and shall bind all persons subsequently acquiring estates or interests in the land burdened and shall be enforceable against such persons as if they had been parties to the supply contract. The supply contract, while in force, shall continue to apply to any substituted or renewed estate or interest in that land. 5

“(2) Where the registration of the supply contract is cancelled as to the whole or any part of the land affected pursuant to **subsection (10)** or **subsection (11)** of **section 68A** of this Act, the supply contract shall have no effect in respect of the whole or part of the land burdened, as the case may be.” 10

48. Regulations—Section 72 (1) of the principal Act is hereby amended by inserting, after paragraph (bc) (as inserted by section 5 (1) of the Forests Amendment Act 1993), the following paragraph: 15

“(bd) Prescribing forms for the purposes of **section 68A** of this Act and providing for such matters as are necessary or expedient for regulating the registration of supply contracts under that section:” 20

49. Amendments to Co-operative Forestry Companies Act 1978—The Co-operative Forestry Companies Act 1978 is hereby amended by repealing sections 17 and 18 of, and the Second and Third Schedules to, that Act. 25

Amendments to Dairy Board Act 1961

50. Sections to be read with Dairy Board Act 1961—This section and the next 10 succeeding sections shall be read together with and deemed part of the Dairy Board Act 1961* (in those sections referred to as the principal Act). 30

*R.S. Vol. 26, p. 63

Amendments: 1992, No. 101; 1993, No. 49; 1994, No. 49

51. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “manufacturer”, the following definition:

“ ‘Milk solids’ means the components of milk valued by the Board under section 26 of this Act:” 35

(2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “own-supply milkfat” (as inserted by section 3 (1) of the Dairy Board Amendment Act 1988), and substituting the following definition:

“ ‘Own-supply milksolids’, in relation to a manufacturer in any season, means the milksolids contained in milk or cream produced by the manufacturer during the season, or acquired by the manufacturer during the season—

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“(a) From supplying shareholders of the manufacturer; or

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“(b) Pursuant to arrangements between the manufacturer and the farmers who produced the milk or cream (not being supplying shareholders of the manufacturer), requiring the farmers to supply to the manufacturer all milk or cream (as the case requires) produced by the farmers, during the season and not required by the farmers; or

15

“(c) From milk stations (within the meaning of section 2 of the Dairy Industry Act 1952);— but does not include the milksolids contained in any milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form.”.

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(3) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “qualifying company” (as substituted by section 2 of the Company Law Reform (Transitional Provisions) Act 1994), and substituting the following definition:

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“ ‘Qualifying company’ means a co-operative company whose articles of association or constitution—

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“(a) Require that on its liquidation its net assets are to be distributed to its shareholders in proportion to milk or milk components they supplied during the most recent complete season and some or all of the 4 seasons immediately before it; and

35

“(b) Either specify those seasons, or provide that they are to be determined (in a specified manner) by its shareholders;—

and, for the purposes of this definition, a reference in the articles of association of a co-operative company to the winding up of the company shall be deemed to be a reference to its liquidation.”.

40

(4) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “qualifying milkfat” (as inserted by section 10 (1) of the Dairy Board Amendment Act 1992), and substituting the following definition:

“ ‘Qualifying milksolids’,—

“(a) In relation to a registered co-operative dairy company, means own-supply milksolids; and

“(b) In relation to a registered co-operative milk marketing company, means milksolids—

“(i) Supplied by the company to a manufacturer who or that is not a registered co-operative dairy company; and 5

“(ii) Manufactured into dairy produce (other than milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form) by the manufacturer; and 10

“(c) In relation to a qualifying farmer, means all milksolids produced by the farmer and manufactured into dairy produce except— 15

“(i) Milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form; and

“(ii) Milksolids supplied to a registered milk marketing company that is a qualifying company; and 20

“(iii) Milksolids manufactured into dairy produce by a qualifying company:”.

(5) Section 2 of the principal Act is hereby further amended by omitting the definition of the term “registered co-operative dairy company” (as inserted by section 7 (1) of the Dairy Board Amendment Act 1992), and substituting the following definition: 25

“‘Registered co-operative dairy company’ means a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 or **Part II** of the Co-operative Companies Act 1995:” 30

(6) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “supplying shareholder” (as inserted by section 3 (1) of the Dairy Board Amendment Act 1988), and substituting the following definition: 35

“‘Supplying shareholder’, in relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949, has the same meaning as in section 2 (1) of that Act and, in relation to a co-operative dairy company registered under **Part II** of the Co-operative Companies Act 1995, has the same meaning as in **section 31** of that Act.” 40

(7) Section 2 of the principal Act is hereby further amended by repealing the definition of the term “voting milkfat” (as 45

inserted by section 7 (1) of the Dairy Board Amendment Act 1992), and substituting the following definition:

“Voting milksolids”,—

5 “(a) In relation to a registered co-operative dairy company, means own-supply milksolids; and

 “(b) In relation to a registered co-operative milk marketing company, means milksolids—

10 “(i) Supplied by the company to a manufacturer who or that is not a registered co-operative dairy company; and

 “(ii) Manufactured into dairy produce (other than milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form) by the manufacturer.”.

15

52. How approval of dairy industry to be obtained—

Section 2A (1) of the principal Act is hereby amended by omitting from paragraphs (a) and (b) (as substituted by section 7 (2) of the Dairy Board Amendment Act 1992) the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”.

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53. Changes in capital—Section 15B (2) of the principal Act

(as inserted by section 9 of the Dairy Board Amendment Act 1992), is hereby amended by omitting the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”.

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54. Board’s capital owned by registered qualifying persons—Section 15C (1) of the principal Act (as so inserted) is hereby amended by omitting the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”.

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55. Qualifying persons may notify board—Section 15I (as so inserted) is hereby amended by omitting the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”.

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56. Secretary may disregard unconfirmed information—Section 15K of the principal Act (as so inserted) is hereby amended by omitting the word “milkfat”, and substituting the word “milksolids”.

57. Sales, mergers, acquisitions, and changes in status—Section 150 of the principal Act (as so inserted) is hereby amended by omitting from subsections (1), (2), (3), (4), (5), and (6) the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”. 5

58. Consequences of dissolution of Board—Section 15P (3) (a) of the principal Act (as so inserted) is hereby amended by omitting the word “milkfat” in each place where it appears, and substituting in each case the word “milksolids”.

59. Realisation differential schemes—Section 26D (1) (b) (ii) of the principal Act (as substituted by section 7 (1) of the Dairy Board Amendment Act 1988) is hereby amended by omitting the word “milkfat”, and substituting the word “milksolids”. 10

60. Board may acquire shares in certain companies— 15
Section 30 of the principal Act is hereby amended by repealing subsection (1A) (as substituted by section 8 (1) of the Dairy Board Amendment Act 1988) and substituting the following subsection:

“(1A) The Board shall not, without the consent of the dairy industry, acquire or subscribe for shares or stock in any company registered under— 20

“(a) The Co-operative Dairy Companies Act 1949; or

“(b) Part II of the Co-operative Companies Act 1995.”

SCHEDULES

FIRST SCHEDULE

Section 43 (1)

ENACTMENTS REPEALED

- 1949, No. 22—The Co-operative Dairy Companies Act 1949 (R.S. Vol. 1, p. 554).
- 1950, No. 45—The Co-operative Dairy Companies Amendment Act 1950 (R.S. Vol. 1, p. 608).
- 1951, No. 30—The Co-operative Dairy Companies Amendment Act 1951 (R.S. Vol. 1, p. 609).
- 1956, No. 18—The Co-operative Companies Act 1956 (R.S. Vol. 1, p. 545).
- 1956, No. 19—The Co-operative Dairy Companies Amendment Act 1956 (R.S. Vol. 1, p. 609).
- 1959, No. 56—The Co-operative Dairy Companies Amendment Act 1959 (R.S. Vol. 1, p. 611).
- 1960, No. 103—The Co-operative Freezing Companies Act 1960 (R.S. Vol. 6, p. 81).
- 1963, No. 81—The Co-operative Dairy Companies Amendment Act 1963 (R.S. Vol. 1, p. 611).
- 1970, No. 140—The Co-operative Dairy Companies Amendment Act 1970 (R.S. Vol. 1, p. 611).
- 1973, No. 54—The Co-operative Dairy Companies Amendment Act 1973 (R.S. Vol. 1, p. 612).
- 1976, No. 82—The Co-operative Companies Amendment Act 1976 (R.S. Vol. 1, p. 552).
- 1976, No. 83—The Co-operative Dairy Companies Amendment Act 1976 (R.S. Vol. 1, p. 612).
- 1976, No. 84—The Co-operative Freezing Companies Amendment Act 1976 (R.S. Vol. 6, p. 87).
- 1977, No. 148—The Co-operative Companies Amendment Act 1977 (R.S. Vol. 1, p. 552).
- 1978, No. 31—The Co-operative Dairy Companies Amendment Act 1978 (R.S. Vol. 1, p. 613).
- 1978, No. 78—The Co-operative Forestry Companies Act 1978 (R.S. Vol. 31, p. 187).
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Section 43 (2)

SECOND SCHEDULE
ORDERS REVOKED

Order	Statutory Regulations Serial Number
The Co-operative Companies Order 1959 ...	S.R. 1959/181
The Co-operative Companies Order 1960 ...	S.R. 1960/14
The Co-operative Companies Order 1965 ...	S.R. 1965/160
The Co-operative Companies Order 1966 ...	S.R. 1966/45
The Co-operative Companies Order (No. 2) 1966 ...	S.R. 1966/144
The Co-operative Stock Provender Companies Order 1969	S.R. 1969/147
The Co-operative Fruit Packing Companies Order 1970	S.R. 1970/19
The Co-operative Poultry Processing Companies Order 1973	S.R. 1973/202
The Co-operative Cold Store Companies Order 1975	S.R. 1975/236
The Co-operative Meat Marketing Companies Order 1976	S.R. 1976/321
The Co-operative Wool Processing and Marketing Com- panies Order 1979	S.R. 1979/19
The Co-operative Fertilizer Supply Companies Order 1979	S.R. 1979/20
The Co-operative Aerial Services Companies Order 1979	S.R. 1979/135
The Co-operative Honey Processing and Marketing Companies Order 1981	S.R. 1981/237
The Co-operative Deer Slaughtering Companies Order 1983	S.R. 1983/50
The Co-operative Tea Processing and Marketing Com- panies Order 1983	S.R. 1983/56
The Co-operative Education Services Companies Order 1990	S.R. 1990/158
The Co-operative Waste Recycling Companies Order 1992	S.R. 1992/245

THIRD SCHEDULE
ENACTMENTS AMENDED

Section 45

Enactment	Amendment
<p>1908, No. 81—The Industrial and Provident Societies Act 1908 (R.S. Vol. 7, p. 407)</p>	<p>By repealing section 14 (as amended by section 3 of the Industrial and Provident Societies Amendment Act 1983 and section 2 of the Company Law Reform (Transitional Provisions) Act 1994), and substituting the following sections:</p> <p>“14. Special resolutions—(1) For the purposes of this Act, a special resolution is a resolution that is—</p> <p>“(a) Passed by a majority of not less than 75 percent of such members of a society for the time being entitled under the rules to vote as are present in person or by proxy (where the rules allow proxies) at any general meeting of which notice, specifying the intention to propose such resolution, has been duly given according to the rules; and</p> <p>“(b) Confirmed by a majority of such members for the time being entitled under the rules to vote as are present in person or by proxy at a subsequent general meeting, of which notice has been duly given, held not less than 14 days nor more than one month from the day of the meeting at which such resolution was first passed.</p> <p>“(2) For the purposes of subsection (1) of this section, a declaration by the chairperson of the meeting that the resolution has been carried shall be deemed conclusive evidence of that fact.</p> <p>“14A. Action that may be taken by special resolution—(1) A society may, by special resolution, change its name.</p> <p>“(2) A change of name does not affect any right or obligation of the society, or of any member of the society, and, notwithstanding the change of name, any pending legal proceedings may be continued by or against the society, or any officer who may sue or be sued on behalf of the society.</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1908, No. 81—The Industrial and Provident Societies Act 1908 (R.S. Vol. 7, p. 407)—<i>continued</i></p>	<p>“(3) Any 2 or more societies may, by special resolution of both or all of them, become amalgamated together as one society, with or without any dissolution or division of the funds of the societies or any of them.</p> <p>“(4) A society may, by special resolution, transfer its engagements to any other registered society that undertakes to fulfil the engagements of the society.</p> <p>“(5) A society may, by special resolution, determine to apply to be registered as a company under the Companies Act 1993.</p> <p>“(6) A society may, by special resolution, determine to amalgamate with or transfer its engagements to a company registered under the Companies Act 1955 or the Companies Act 1993, as the case may be.</p> <p>“(7) A copy of every special resolution passed for any of the purposes referred to in subsections (1), (3), (4), or (6) of this section, signed by the chairperson of the meeting and countersigned by the secretary of the society, shall be sent to the Registrar, and be registered, and until it is registered, the special resolution shall not take effect.</p> <p>“(8) A copy of every special resolution passed for the purposes of subsection (5) of this section shall be sent or delivered to the Registrar of Companies together with the application for registration under section 12 of the Companies Act 1993.</p> <p>“14B. Consequential provisions— Where a society is registered as a company, or amalgamates with, or transfer all its engagements to a company,—</p> <p>“(a) The registry of the society under this Act shall cease and be cancelled by the Registrar; and</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1908, No. 81—The Industrial and Provident Societies Act 1908 (R.S. Vol. 7, p. 407)— <i>continued</i>	<p>“(b) All property (both real and personal), rights, interests, liabilities, contracts, engagements, and authorities of the society shall be the property (both real and personal), rights, interests, liabilities, contracts, engagements, and authorities of the company and shall be held or enforceable by, or in favour of the company, or against the company in priority against the property of the company over all other rights or claims against, or liabilities of, the company; and</p> <p>“(c) Any action, arbitration, or proceeding pending or existing against the society may be prosecuted, continued, and enforced against the company.”</p>
1949, No. 22—The Co-operative Dairy Companies Act 1949 (R.S. Vol. 1, p. 553)	<p>By adding to section 28 (as substituted by section 7 of the Co-operative Dairy Companies Amendment Act 1956) the following subsections:</p> <p>“(3) Sections 194 and 195 of the Companies Act 1955 shall not apply in relation to any transaction carried out for the purpose of the principal object of a co-operative dairy company registered under this Act—</p> <p>“(a) Between the company and a director of the company in his or her capacity as a member of the company; or</p> <p>“(b) Between the company and a member of the company of which a director of the company is also a director.</p> <p>“(4) Section 199D of the Companies Act 1955 shall not apply in relation to the acquisition or disposition of shares or</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1949, No. 22—The Co-operative Dairy Companies Act 1949 (R.S. Vol. 1, p. 553)— <i>continued</i>	<p>securities in a co-operative dairy company registered under this Act by a director of the company in connection with the carrying out of the principal object of the company.</p> <p>“(5) Subsections (3) and (4) of this section shall be deemed to have come into force on the 1st day of July 1994.”</p>
1956, No. 18—The Co-operative Companies Act 1956 (R.S. Vol. 1, p. 545)	<p>By adding to section 10 the following subsections:</p> <p>“(3) Sections 194 and 195 of the Companies Act 1955 shall not apply in relation to any transaction carried out for the purpose of the principal object of a co-operative company registered under this Act—</p> <p>“(a) Between the company and a director of the company in his or her capacity as a member of the company; or</p> <p>“(b) Between the company and a member of the company of which a director of the company is also a director.</p> <p>“(4) Section 199D of the Companies Act 1955 shall not apply in relation to the acquisition or disposition of shares or securities in a co-operative company registered under this Act by a director of the company in connection with the carrying out of the principal object of the company.</p> <p>“(5) Subsections (3) and (4) of this section shall be deemed to have come into force on the 1st day of July 1994.”</p>
1960, No. 103—The Co-operative Freezing Companies Act 1960 (R.S. Vol. 6, p. 81)	<p>By adding to section 10 the following subsections:</p> <p>“(3) Sections 194 and 195 of the Companies Act 1955 shall not apply in relation to any transaction carried out for the purpose of the principal object of a co-operative freezing company registered under this Act—</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1960, No. 103—The Co-operative Freezing Companies Act 1960 (R.S. Vol. 6, p. 81)—<i>continued</i></p>	<p>“(a) Between the company and a director of the company in his or her capacity as a shareholder of the company; or</p> <p>“(b) Between the company and a shareholder of the company of which a director of the company is also a director.</p> <p>“(4) Section 199D of the Companies Act 1955 shall not apply in relation to the acquisition or disposition of shares or securities in a co-operative freezing company registered under this Act by a director of the company in connection with the carrying out of the principal object of the company.</p> <p>“(5) Subsections (3) and (4) of this section shall be deemed to have come into force on the 1st day of July 1994.”</p>
<p>1978, No. 78—The Co-operative Forestry Companies Act 1978 (R.S. Vol. 31, p. 187)</p>	<p>By inserting, after subsection (3) of section 21, the following subsections:</p> <p>“(3A) Sections 194 and 195 of the Companies Act 1955 shall not apply in relation to any transaction carried out for the purpose of the principal object of a co-operative forestry company registered under this Act—</p> <p>“(a) Between the company and a director of the company in his or her capacity as a member of the company; or</p> <p>“(b) Between the company and a member of the company of which a director of the company is also a director.</p> <p>“(3B) Section 199D of the Companies Act 1955 shall not apply in relation to the acquisition or disposition of shares or securities in a co-operative forestry company registered under this Act by a director of the company in connection with the carrying out of the principal object of the company.</p>

THIRD SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Enactment	Amendment
<p>1978, No. 78—The Co-operative Forestry Companies Act 1978 (R.S. Vol. 31, p. 187)—<i>continued</i> 1978, No. 103—The Securities Act 1978 (R.S. Vol. 15, p. 533)</p>	<p>“(3c) Subsections (3a) and (3b) of this section shall be deemed to have come into force on the 1st day of July 1994.”</p> <p>By repealing paragraphs (a) and (b) of the definition of the term “co-operative company” in section 2(1), and substituting the following paragraphs:</p> <p>“(a) A company registered as a co-operative company under the Co-operative Companies Act 1956 or the Co-operative Companies Act 1995; or</p> <p>“(b) A company registered as a co-operative dairy company under the Co-operative Dairy Companies Act 1949 or Part II of the Co-operative Companies Act 1995; or”.</p>
<p>1982, No. 118—The Friendly Societies and Credit Unions Act 1982</p>	<p>By repealing section 84 (as amended by section 2 of the Company Law Reform (Transitional Provisions) Act 1994), and substituting the following section:</p> <p>“84. Society may apply to be registered as company—(1) A registered society may, by special resolution, determine to apply to be registered as a company under the Companies Act 1993.</p> <p>“(2) A society that has branches shall not pass a resolution of the kind referred to in subsection (1) of this section except with the consent of the central body of the society.</p> <p>“(3) A copy of every special resolution passed for the purposes of subsection (1) of this section shall be sent or delivered to the Registrar of Companies together with the application for registration under section 12 of the Companies Act 1993.</p> <p>“(4) Subject to subsection (5) of this section and to section 97 of this Act, if a registered society is registered as a company under the Companies Act 1993, the regis-</p>

THIRD SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1982, No. 118—The Friendly Societies and Credit Unions Act 1982— <i>continued</i>	<p>tration of that society under this Act shall thereupon cease and shall be cancelled by the Registrar.</p> <p>“(5) Registration of a registered society as a company shall not affect any right or claim subsisting against the society or any penalty incurred by the society, and—</p> <p>“(a) For the purpose of enforcing any such right, claim, or penalty, the society may be sued and proceeded against in the same manner as if it had not become registered as a company:</p> <p>“(b) Every such right or claim, or the liability to any such penalty, shall have priority as against the property of the company over all other rights or claims against or liabilities of the company.”</p>
1993, No. 108—The Companies Amendment Act 1993	<p>By omitting from section 2 (1) the words “and subsection (3)”.</p> <p>By repealing subsections (3) and (4) of section 2.</p>
1994, No. 164—The Income Tax Act 1994	<p>By adding to section CK 3 (3) the words “, whether or not the company is reregistered under the Co-operative Companies Act 1995”.</p> <p>By repealing paragraph (c) of section OC 4 (3), and substituting the following paragraphs:</p> <p>“(c) Any co-operative pig marketing company within the meaning of section 2 of the Co-operative Companies Act 1956 that is registered as a co-operative company under that Act; or</p> <p>“(d) Any company referred to in any of paragraphs (a) to (c) of this subsection that is reregistered as a co-operative company under Part I of the Co-operative</p>

THIRD SCHEDULE—*continued*
ENACTMENTS AMENDED—*continued*

Enactment	Amendment
1994, No. 164—The Income Tax Act 1994— <i>continued</i>	<p>Companies Act 1995 or as a co-operative dairy company under Part II of that Act,—”.</p> <p>By repealing paragraph (b) of the definition of the term “limited attribution company” in section OD 5 (10), and substituting the following paragraph:</p> <p>“(b) Co-operative company registered under the Co-operative Companies Act 1956, Part I or Part II of the Co-operative Companies Act 1995, the Co-operative Dairy Companies Act 1949, the Co-operative Freezing Companies Act 1960, or the Co-operative Forestry Companies Act 1978; or”.</p>
1994, No. 165—The Taxation Review Authorities Act 1994	<p>By repealing the definition of the term “co-operative company” in section 17 (4), and substituting the following definition:</p> <p>“‘Co-operative company’ means—</p> <p>“(a) A co-operative company registered under the Co-operative Companies Act 1956 or the Co-operative Companies Act 1995; or</p> <p>“(b) A co-operative dairy company within the meaning of the Co-operative Dairy Companies Act 1949 or Part II of the Co-operative Companies Act 1995.”.</p>