

## CO-OPERATIVE DAIRY COMPANIES AMENDMENT BILL

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### EXPLANATORY NOTE

THIS Bill amends the Co-operative Dairy Companies Act 1949. It is to come into force on 1 January 1957, when the Companies Act 1955 comes into force.

*Clause 2* extends the power of a co-operative dairy company to alter its articles of association so as to bind its shareholders to hold more shares for a particular quantity of milk, cream, or butterfat supplied by them to the company. At present the number of shares to be held may be increased by not more than 25 per cent by special resolution, but there is nothing to stop a company from making any number of successive increases. The clause provides instead for an increase of not more than 50 per cent, but all increases made within the preceding five years are to be taken into account.

*Subclause (2)* provides that if the resolution is passed by a majority of not less than nine-tenths (instead of the three-fourths required for a special resolution) the increase may be over 50 per cent, but once again all increases made within the preceding five years are to be taken into account; and where any supplying shareholder has voted against the resolution he may require the company to accept a surrender of his shares, in which case the company must accept the surrender and the resolution will not be binding on him.

*Subclause (2)* also provides that every resolution requiring supplying shareholders to hold more shares is to become binding on every person who is a shareholder but not a supplying shareholder at the date of the passing of the resolution if he subsequently becomes a supplying shareholder. It is made clear in paragraph (c) in *subclause (1)* that this is the only case in which a "dry" shareholder can be required to hold more shares by a resolution for which he does not vote.

*Subclause (3)* provides that the restrictions imposed by section 14 of the principal Act on the proportion of a company's shares that may be surrendered are not to apply to surrenders under this clause.

*Subclause (4)* provides for the fixing of the fair value of the surrendered shares by the Co-operative Dairy Companies Tribunal, where the company and the shareholder are unable to agree.

*Clause 3* relates to the procedure for altering the articles of association so as to require supplying shareholders to hold more shares. It provides that such an alteration may be made not only by a special resolution but also by a majority of three-fourths of those voting in a postal ballot, or by a written

agreement signed by a majority of three-fourths of all the supplying shareholders. But before any such alteration can be made by postal ballot or written agreement that method must be previously authorised by a resolution of the supplying shareholders passed at a meeting of the company. Proxies may be appointed to vote on any such resolution, but each proxy must be a supplying shareholder. When a written agreement has been signed by a majority of three-fourths or nine-tenths, as the case may be, the company is to notify the supplying shareholders who have not signed, and the agreement will be deemed to have been passed as a resolution on a date to be specified in the notice. The shareholders who receive the notice have the same rights as if they had voted against the resolution.

*Clause 4* amends the definition of the term "supplying shareholder" in section 2 (1) of the principal Act so as to enable the directors of a co-operative dairy company to declare any shareholder to be a supplying shareholder as at any date if he is or was supplying milk, cream, or butterfat to the company on that date or at any time within eight months before that date. This amendment is required to ensure that the Act applies to persons who are really supplying shareholders although they may be outside the definition by reason of some unusual or complicated arrangement relating to the ownership or control of the cows or the carrying on of the farming operations, or by reason of a seasonal interruption of supply.

*Clause 5* amends section 21 of the principal Act so as to provide that where the company commences to be wound up before the fair value of any surrendered shares has been fixed, the surrender of the shares is deemed to be cancelled.

*Clause 6* enables regulations to be made in respect of the accounts and audit of co-operative dairy companies. This provision is made in view of the exclusion by *clause 6* of some of the provisions of the Companies Act 1955 as to accounts. Power is given to prescribe penalties for offences against the regulations similar to the penalties for offences against the provisions of the Companies Act 1955 relating to accounts and audit.

*Clause 7* provides that certain provisions of the Companies Act 1955 shall not apply to co-operative dairy companies, and that certain other provisions of that Act are to apply with modifications.

*Clause 8* amends the model articles of association in the First Schedule to the principal Act by substituting references to the Companies Act 1955 for the references to the Companies Act 1933.

*Subclause (2)* makes similar amendments in the articles of those companies that have adopted the model articles.

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*Hon. Mr Marshall*

## CO-OPERATIVE DAIRY COMPANIES AMENDMENT

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### ANALYSIS

Title	
1. Short Title and commencement	5. Cancellation of surrender if winding up commences before fair value of shares is fixed.
2. Increases in number of shares required to be held	6. Regulations as to accounts
3. Procedure for increasing number of shares required to be held	7. Exclusion and modification of certain provisions of Companies Act
4. Definition of "supplying shareholder"	8. Amending model articles of association

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### A BILL INTITULED

**An Act to amend the Co-operative Dairy Companies Act 1949**  
**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Co-operative Dairy Companies Amendment Act 1956, and shall be read together with and deemed part of the Co-operative Dairy Companies Act 1949 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and fifty-seven.

**2. Increases in number of shares required to be held**—  
(1) Section eight of the principal Act is hereby amended by  
15 repealing the proviso, and substituting the following proviso:

“Provided that—

“(a) No such alteration or addition shall affect any contract between the company and any shareholder which is not created or evidenced by or in the terms of the articles of association: 5

“(b) Except as provided in subsection *two* of this section, no such alteration or addition shall impose on any supplying shareholder who has not voted for the resolution to alter or add to the articles an obligation to hold a number of shares in respect of his supply from time to time of milk, cream, or butterfat to the company which exceeds by more than fifty per cent the smallest number of shares which he would have been obliged to hold in respect of a similar supply at any time within five years before the date of the passing of the resolution: 10 15

“(c) Except as provided in subsection *four* of this section, no such alteration or addition shall impose on any shareholder who is not a supplying shareholder at the date of the passing of the resolution to alter or add to the articles, and has not voted for the resolution, an obligation to hold a greater number of shares than he was obliged to hold before that date.” 20

(2) Section eight of the principal Act is hereby further amended by adding the following subsections as subsections two, three, and four thereof: 25

“(2) Notwithstanding anything in paragraph (b) of the proviso to subsection one of this section, where a resolution to which this subsection relates is passed, in any of the ways prescribed by section eight A of this Act, by a majority of not less than nine-tenths, it shall be binding on every supplying shareholder of the company: 30

“Provided that any supplying shareholder of the company who has voted against the resolution may within two months after the date of the passing of the resolution surrender to the company all the shares held by him in the company, and in any such case the company shall accept the surrender and the resolution shall not be binding on the shareholder. 35

“(3) Subsection *two* of this section relates to any resolution to alter or add to the articles of association of a company registered under this Act so as to impose on each supplying shareholder an obligation to hold a number of shares in respect of his supply from time to time of milk, cream, or butterfat to 40

the company which exceeds by more than fifty per cent the smallest number of shares which he would have been obliged to hold in respect of a similar supply at any time within five years before the date of the passing of the resolution.

5 “(4) Notwithstanding anything in paragraph (c) of the proviso to subsection one of this section, every resolution to alter or add to the articles so as to impose on supplying shareholders an obligation to hold more shares shall be binding on every person who, being a shareholder but not a supplying  
10 shareholder of the company at the date of the passing of the resolution, becomes a supplying shareholder of the company at any time after that date.”

(3) Section fourteen of the principal Act is hereby amended by inserting in subsection one, after the words “under the provisions of this Act”, the words “(other than subsection two of  
15 section eight)”.

(4) Section twenty of the principal Act is hereby amended as follows:

(a) By inserting in paragraph (a), after the words “surrendered to a company”, the words “under subsection two of section eight or”:  
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(b) By inserting in paragraph (b), after the words “surrendered to it”, the words “under subsection two of section eight or”.

25 **3. Procedure for increasing number of shares required to be held**—The principal Act is hereby amended by inserting, after section eight, the following new section:

“8A. (1) A resolution to alter or add to the articles of association of a company registered under this Act so as to impose  
30 on supplying shareholders an obligation to hold more shares in respect of their supply from time to time of milk, cream, or butterfat to the company may be passed by the supplying shareholders—

35 “(a) As a special resolution in accordance with section one hundred and forty-five of the Companies Act 1955, as applying to the company; or

40 “(b) By a resolution passed by postal ballot by a majority of not less than three-fourths, in which case, in calculating the majority, reference shall be had to the number of votes cast for and against the resolution in the postal ballot; or

“(c) By an agreement in writing signed by a majority of not less than three-fourths of all the supplying shareholders of the company, in which case, in calculating the majority signing the agreement, reference shall be had to the number of votes to which each shareholder is entitled: 5

“Provided that such a resolution shall not be passed by postal ballot or by an agreement in writing unless the passing of the resolution in that way has previously been authorised by a resolution passed by a majority of the supplying shareholders who vote thereon at a meeting of the company. 10

“(2) A supplying shareholder entitled to attend any meeting of a company registered under this Act, and to vote on a resolution to alter or add to the articles of association of the company so as to impose on supplying shareholders an obligation to hold more shares in respect of their supply from time to time of milk, cream, or butterfat, shall be entitled to appoint another person (being a supplying shareholder of the company) to attend and vote on that resolution instead of him. 15 20

“(3) Where a resolution is passed by an agreement in writing under paragraph (c) of subsection *one* of this section, the company shall give to all the supplying shareholders who have not signed the agreement notice of the fact that the agreement has been signed by a majority of not less than three-fourths or not less than nine-tenths, as the case may be, and that the agreement will become effective as a resolution on a date to be specified in the notice, being not less than seven days after the date of the giving of the notice. The date so specified shall be deemed for all purposes to be the date of the passing of the resolution. For the purposes of section eight of this Act every supplying shareholder to whom notice is required to be given under this subsection shall be deemed to have voted against the resolution.” 25 30

**4. Definition of “supplying shareholder”**—Section two of the principal Act is hereby amended by adding to the definition of the term “supplying shareholder” in subsection one the following additional proviso: 35

“Provided further that every shareholder of a co-operative dairy company that is or was supplying milk, cream, or butterfat to the company at any date on which his status as a supplying shareholder is to be determined, or at any time 40

within eight months before that date, and has been accepted as or declared by the directors of the company to be or to have been a supplying shareholder of the company as at that date, shall be deemed for all purposes to be or to have been a  
5 supplying shareholder accordingly.”

**5. Cancellation of surrender if winding up commences before fair value of shares is fixed**—Section twenty-one of the principal Act is hereby amended by inserting, after subsection two, the following subsection:

10 “(2A) Where the company commences to be wound up before the fair value of the shares has been fixed by agreement between the company and the shareholder or by order of the Tribunal, the surrender of the shares shall be deemed  
15 up.”

**6. Regulations as to accounts**—Section twenty-seven of the principal Act is hereby amended by adding the following subsections as subsections two and three thereof:

20 “(2) Without limiting the general power hereinbefore conferred, it is hereby declared that regulations may be made under this section for the purpose of making such provisions as may be deemed necessary in relation to the accounts of co-operative dairy companies, and the audit thereof, and in  
25 particular for requiring reports, balance sheets, profit and loss accounts, and other accounts and statements to be prepared, prescribing forms therefor, and regulating their preparation, certification, audit, and publication.

30 “(3) Regulations made under this section may prescribe penalties for offences against the regulations, not exceeding a fine of two hundred pounds or imprisonment for a term of six months, and may contain such incidental and supplementary provisions as appear to the Governor-General in Council to be necessary or expedient for the purposes of the regulations.”

**7. Exclusion and modification of certain provisions of Companies Act**—The principal Act is hereby amended by repealing section twenty-eight, and substituting the following section:

35 “28. (1) The following provisions of the Companies Act 1955 shall not apply to a co-operative dairy company which is registered under this Act or whose articles of association provide for its registration under this Act, namely:

40 “(a) Section ninety, which relates to the duties of companies with respect to share certificates:

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“(b) Section one hundred and forty, which relates to proxies:

“(c) Sections one hundred and fifty-three to one hundred and sixty-one, which relate to the contents and form of accounts, group accounts, and auditors’ and directors’ reports: 5

“(d) Section one hundred and sixty-six, which relates to the auditors’ report, etc.

“(2) In the application thereof to a co-operative dairy company which is registered under this Act or whose articles of association provide for its registration under this Act, the following provisions of the Companies Act 1955 shall be deemed to be modified as follows: 10

“(a) Paragraph (a) of subsection one of section one hundred and thirty-seven shall be construed as if the reference therein to fourteen clear days’ notice were a reference to seven clear days’ notice: 15

“(b) Subsection two of section one hundred and forty-five shall be construed as if the references therein to twenty-one clear days’ notice were references to fourteen clear days’ notice: 20

“(c) Subsection one of section one hundred and sixty-two shall be construed as if the reference therein to fourteen days were a reference to seven days.”

**8. Amending model articles of association—**(1) The First Schedule to the principal Act is hereby amended as follows: 25

(a) By omitting from regulation three the words “Second Schedule to the Companies Act 1933”, and substituting the words “Third Schedule to the Companies Act 1955”: 30

(b) By omitting from the definition of the term “the Act” in regulation four the words “Companies Act 1933”, and substituting the words “Companies Act 1955”:

(c) By omitting from regulation thirty-seven the words “section 6 of the Statutes Amendment Act 1941”, and substituting the words “section 86 of the Act”: 35

(d) By omitting from paragraph (b) of regulation forty-six the words “section 62 (1) (d)”, and substituting the words “section 70 (1) (d)”:



- (e) By omitting from regulation fifty-three the words “section 125 (2)”, and substituting the words “section 145 (2)”:
- 5 (f) By omitting from paragraph (g) of regulation eighty-nine the words “section 216 or section 268”, and substituting the words “section 189”:
- (g) By omitting from regulation ninety-nine the words “section 381”, and substituting the words “section 468”:
- 10 (h) By omitting from regulation one hundred and nineteen the words “section 131 of the Act”, and substituting the words “section 152 of the Act and any regulations in that behalf made under the Co-operative Dairy Companies Act 1949”;
- 15 (i) By omitting from regulation one hundred and twenty-one the words “sections 139, 140, and 141 of the Act”, and substituting the words “sections 163 to 165 of the Act and any regulations in that behalf made under the Co-operative Dairy Companies Act 1949”:
- 20 (j) By omitting from regulation one hundred and forty-nine the words “Dairy Industry Act 1908”, and substituting the words “Dairy Industry Act 1952”.
- (2) Where any regulation amended by this section has been  
25 adopted by any company under section three of the principal Act and forms part of the articles of association of the company on the date of the commencement of this Act, the amendment made in the regulation by subsection *one* of this section shall be deemed to have been duly made on that date in the  
30 articles of association of the company.