

COOPERATIVE FREEZING COMPANIES BILL

EXPLANATORY NOTE

THE purpose of this Bill is to provide for the registration of freezing companies as cooperative companies. Although the Cooperative Companies Act 1956 includes a provision for it to be extended by Order in Council to companies of a kind not at present covered by that Act, it would not be practicable to extend that Act to freezing companies because that Act applies only to companies that are strictly supplier or consumer cooperatives.

In the New Zealand meat industry there is the right of open entry to freezing works, and acceptance of stock cannot be made subject to restrictions such as limiting the use of facilities to shareholders. Also, in practice freezing companies accept primary produce from persons who are not shareholders.

This Bill follows as closely as is practicable the provisions of the Cooperative Companies Act 1956.

Clause 2 defines several terms used in the Bill. "Cooperative freezing company" is defined as being a company holding a meat export slaughterhouse licence under the Meat Act 1939 and the principal objects of which are the slaughtering of stock and the preparation, storage, and marketing of the products thereof. The company may in addition have as one of its principal objects the storage and marketing of primary produce.

The stock or produce must be raised or fattened or produced by its shareholders, and three-fifths of the shares, or such smaller proportion as the Minister approves, must be held either by suppliers or cooperative dairy companies. A company will not cease to be a cooperative freezing company by reason of the fact that it also slaughters and stores stock on its own behalf or stock supplied by persons other than shareholders or stores primary produce on its own behalf or accepts for storage primary produce from persons other than shareholders.

Clause 3 enables cooperative freezing companies within the meaning of the Act to be registered as such under the Act, on application to the Registrar of Companies. *Subclause (3)* requires the registration to be provided for by the articles of association or by a special resolution.

Clause 4 enables a company registered under the Act to require or accept from any of its shareholders surrenders of their shares and to pay for them out of the assets of the company.

Clause 5 authorises the reissue of surrendered shares.

Clause 6 provides that the total number of shares surrendered and not reissued is not to exceed one-fifth of the number of shares for the time being issued exclusive of the shares surrendered and not reissued.

Clause 7 provides in *subclause (1)* for the surrender of shares by agreement. *Subclause (2)* enables the personal representative of a deceased shareholder to require the company to accept a surrender of the deceased's shares. *Subclause (3)* enables a shareholder to require the company to accept a surrender of his shares if he has ceased for five years to supply the company with stock or primary produce. *Subclauses (2)* and *(3)* are subject to *clause 6* of the Bill, so that the company is not required to accept a surrender of shares if it would result in the total number of surrendered shares exceeding one-fifth of the total number of shares remaining issued.

Clause 8 provides for the compulsory surrender of shares on demand made by the company in accordance with the articles of association and pursuant to a resolution of the shareholders. In the case of a shareholder who has not been a supplying shareholder (as defined in the articles of association) for at least 12 months, the demand may be made pursuant to a resolution of the directors.

Clause 9 provides that the consideration for the surrender of any shares is to be their value as agreed upon or fixed by arbitration, except where the company requires a compulsory surrender under *clause 8 (1)*, when the amount paid up on the shares, together with interest at 5 per cent per annum from the end of the last financial year, is to be payable.

Clause 10 provides that the preceding clauses will override anything in the Companies Act 1955 or any rule of law, and provides that certain provisions of the Companies Act relating to the issue of share certificates and to directors are not to apply to cooperative freezing companies.

Clause 11 enables a company to use the word "cooperative" as part of its name so long as it is entitled to be registered under the Act, with an obligation to change its name if it ceases to be registered or entitled to registration.

Clause 12 contains special provisions relating to the Auckland Farmers' Freezing Company Limited. That company by a special resolution resolved to reorganise as a cooperative company. The resolution, which was passed without dissent by the shareholders present representing shareholders holding approximately 85 per cent of the shares in the company, included provisions that the consideration payable for shares surrendered, whether voluntarily or compulsorily, should be the amount paid up on the shares. This clause makes special provision in the case of the company to enable it to be registered as a cooperative freezing company under the Bill and to enable its reorganisation to be completed in accordance with the special resolution.

The clause also provides that the Minister of Justice may authorise the company to retain unissued any surrendered shares in excess of the maximum of one-fifth of the issued shares provided for in *clause 6* of the Bill, and that a demand for the compulsory surrender of shares may be made pursuant to a resolution of the directors, who will also be entitled to accept a voluntary surrender. The provisions mentioned in this paragraph expire on 31 December 1965.

Hon. Mr Mason

COOPERATIVE FREEZING COMPANIES

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A BILL INTITULED

An Act to provide for the registration of freezing companies as cooperative companies

BE IT ENACTED by the General Assembly of New Zealand
5 in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title**—This Act may be cited as the Cooperative Freezing Companies Act 1960.

2. **Interpretation**—In this Act, unless the context otherwise
10 requires,—

“Articles” has the same meaning as in the Companies Act 1955:

“Company” means a company incorporated under the
15 Companies Act 1955 or under any former Companies Act:

“Cooperative freezing company” means a company (not being a private company within the meaning of the Companies Act 1955)—

(a) Which holds a meat export slaughterhouse licence under the Meat Act 1939; and 5

(b) The principal objects of which are—

(i) The slaughtering of stock and the preparation, storage, and marketing of the products thereof; or

(ii) The objects specified in subparagraph (i) of this paragraph and also the storage and marketing of other primary produce,— 10

being stock raised or fattened or other primary produce produced or supplied by its shareholders (whether or not the company also slaughters stock on its own behalf or stock offered by persons who are not shareholders in the company and prepares, stores, and markets the products thereof, and whether or not the company also stores or markets other primary produce on its own behalf or on behalf of persons who are not shareholders in the company); and 20

(c) Of the shares issued by which not less than three-fifths in nominal value, or such smaller proportion as the Minister approves from time to time, are held by shareholders who are either persons who occupy or control land on which the stock is raised or fattened or the primary produce is produced or are cooperative dairy companies within the meaning of the Cooperative Dairy Companies Act 1949 which supply primary produce to the company: 30

“Minister” means the Minister of Justice:

“Principal objects”, in relation to any company, means the principal business that the company for the time being carries on, notwithstanding that it may have authority to carry on any other business: 35

“Registrar” means the Registrar of Companies under the Companies Act 1955:

“Stock” has the same meaning as in the Meat Act 1939.

3. Registration of cooperative freezing company—(1) A cooperative freezing company may at any time, on application to the Registrar, and on payment of a fee of one pound, become registered as such under this Act. 40

(2) The Registrar shall issue to the company when so registered a certificate of registration under this Act, and that certificate shall be conclusive evidence of the validity of the registration. 45

(3) No application for registration under this Act shall be made unless registration under this Act is provided for by the articles of the company or by a special resolution of the company.

5 (4) Every application for the registration of a company under this Act shall be accompanied by a statutory declaration, made by one or more directors of the company, that the company is a cooperative freezing company within the meaning of this Act.

10 (5) Any registration of a company under this Act may at any time be cancelled by the Registrar if he is of opinion that the company is not or has ceased to be a cooperative freezing company within the meaning of this Act, and upon the cancellation being notified to the company the company shall
15 cease to be registered under this Act.

4. Surrender of shares—It shall be lawful for any company registered under this Act to require or accept from any of its shareholders, in accordance with the provisions hereinafter contained, a surrender of any shares held by them in the
20 company, and to pay for the shares so surrendered out of the assets of the company in manner hereinafter provided.

5. Reissue of surrendered shares—Any shares so surrendered may be reissued by the company to any person in the same manner as if they had not been previously issued.

25 **6. Surrendered shares not to exceed one-fifth of issued shares**—(1) The number of shares so surrendered to the company and not reissued shall not at any time exceed one-fifth of the total number of shares issued by the company exclusive of the said shares so surrendered and not reissued.

30 (2) Every director of the company who accepts, authorises, or consents to the surrender of any share in breach of the provisions of this section commits an offence, and shall be liable on summary conviction to a fine not exceeding fifty pounds in respect of every share so unlawfully surrendered.

35 **7. Shareholder may surrender shares**—(1) In any case not provided for in the following provisions of this section a company registered under this Act may in its discretion, subject to the provisions of section 6 of this Act, accept the surrender of any shares from any shareholder who agrees to surrender
40 the shares to the company.

(2) The personal representative of a deceased shareholder of a company registered under this Act may surrender to the company any shares held by the deceased shareholder in the company, and, subject to the provisions of section 6 of this Act, the company shall accept that surrender. 5

(3) Where any shareholder of a company which is registered under this Act has not supplied any stock or primary produce to the company during the immediately preceding period of five years, he may surrender to the company any shares held by him in the company, and, subject to the provisions of section 6 of this Act, the company shall accept that surrender. 10

8. Compulsory surrender of shares—(1) Any company registered under this Act may at any time (subject to any restrictions or conditions imposed by its articles and to section 6 of this Act) require any shareholder to surrender to the company the shares held by him in the company, or so many of them as the company thinks fit. 15

(2) In the case of any shareholder who has not during the immediately preceding period of twelve months been a supplying shareholder as defined in the articles of association of the company, a demand for the surrender of any shares under the authority of this section may be made pursuant to a resolution of the directors of the company. 20

(3) Subject to the provisions of subsection (2) of this section, no demand for the surrender of any shares shall be made under the authority of this section except pursuant to a resolution of the shareholders of the company. 25

(4) On the expiration of one month after a written notice of any such resolution has been received by the shareholder, the shares so to be surrendered by him shall be deemed to have been duly surrendered. 30

9. Consideration for surrender of shares—There shall be payable to every shareholder whose shares are surrendered under this Act out of the assets of the company by way of consideration for that surrender— 35

(a) Where the surrender is under subsection (1) of section 8 of this Act, the amount paid up or deemed to be paid up on the shares so surrendered, together with interest on that amount at the rate of five per cent per annum, calculated from the end of the preceding financial year of the company to the date of the surrender: 40

- 5 (b) In any other case, the value of the shares so surrendered, to be agreed upon by the company and the shareholder, or in default of agreement to be fixed by arbitration under the Arbitration Act 1908, and this section shall be deemed to be a submission within the meaning of that Act.

10. Limiting application of Companies Act 1955—

10 (1) Except where this Act expressly provides to the contrary, the foregoing provisions of this Act shall take effect notwithstanding anything in the Companies Act 1955 or in any rule of law or in the memorandum or articles of any company.

15 (2) The following provisions of the Companies Act 1955 shall not apply to a cooperative freezing company which is registered under this Act or the articles of which provide for its registration under this Act, namely:

- (a) Section 90, which relates to the duties of companies with respect to the issue of share certificates:
(b) Section 184, which relates to restrictions on the appointment or advertisement of directors:
20 (c) Section 185, which relates to the share qualifications of directors.

11. Use of word “cooperative” in name of cooperative freezing company—

25 (1) Any company entitled to be registered under this Act as a cooperative freezing company may be registered under the Companies Act 1955 by a name which includes the word “cooperative”.

30 (2) If at any time after a company is so registered under the Companies Act 1955 or under any former Companies Act it ceases to be entitled to be registered under this Act, or its registration under this Act is cancelled, subsection (1) of this section shall cease to apply to the company, and sections 31 and 32 of the Companies Act 1955 shall apply accordingly.

12. Special provisions relating to Auckland Farmers’ Freezing Company Limited—

35 Whereas, by a special resolution passed at an extraordinary general meeting of the Auckland Farmers’ Freezing Company Limited (in this section referred to as the company) on the tenth day of June, nineteen hundred and sixty, by the vote of the shareholders present representing personally or by proxy approximately eighty-five
40 per cent of the shareholders of the company, it was resolved without dissent to reorganise the company as a cooperative

company: And whereas the resolution included among other things provisions that the consideration payable to shareholders in respect of shares surrendered voluntarily or compulsorily should be the amount paid up or deemed to be paid up on the shares: And whereas it is desirable that the reorganisation of the company should be completed in accordance with the provisions of the resolution and that, until the reorganisation of the company is completed, the company should be authorised to retain surrendered shares in excess of one-fifth of the total number of shares issued by the company exclusive of the shares so surrendered and not reissued and that the compulsory surrender of shares may be demanded pursuant to a resolution of the directors: Be it therefore enacted as follows:

(1) The said resolution shall be deemed for the purposes of subsection (3) of section 3 of this Act to be a special resolution providing for the registration of the company under this Act.

(2) Notwithstanding anything in the foregoing provisions of this Act—

(a) The company shall be entitled to hold unissued such proportion of the total number of shares issued by the company in excess of the proportion specified in subsection (1) of section 6 of this Act as the Minister authorises from time to time:

(b) A demand for the compulsory surrender of shares in the company (whether or not the shareholder is a supplying shareholder) may be made pursuant to a resolution of the directors and a voluntary surrender of shares in the company may be accepted pursuant to such a resolution:

(c) The consideration payable by the company in respect of any shares surrendered to the company, whether voluntarily or compulsorily and whether the surrender is before or after the company is reorganised as aforesaid, shall be the amount paid up or deemed to be paid up on those shares.

(3) Paragraphs (a) and (b) of subsection (2) of this section shall continue in force until the thirty-first day of December, nineteen hundred and sixty-five, and shall then expire.