

DAIRY BOARD AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Dairy Board Act 1961.

The principal purposes of the Bill are to—

- (a) Provide for the Dairy Board to have a share structure. The shares in the Board will be held by co-operative dairy companies, being companies in which the voting rights are held by supplying shareholders and whose shares are held by supplying shareholders in proportion to milksolids supplied by them. Such companies are referred to in the Bill as “qualifying companies holding shares”;
- (b) Provide for the Board to have a constitution containing matters relating to shares;
- (c) Provide for the business and affairs of the Board to be managed by a board of directors as is the case with companies;
- (d) Extend to the directors of the Board the duties imposed on directors of companies under companies legislation;
- (e) Deem the Board to be a company in the event of its dissolution unless the Board adopts, with the approval of qualifying companies holding shares, a scheme for the transfer of its undertaking that will take effect upon the dissolution of the Board.

The amendments to the Dairy Board Act 1961 are contained in *Part I* of the Bill.

The Bill also amends the Financial Reporting Act 1993 to make it clear that the Accounting Standards Review Board may approve financial reporting standards for bodies that are required to prepare financial statements in accordance with that Act as if they were reporting entities. The Dairy Board will, by virtue of *clause 14*, be required to comply with the Financial Reporting Act 1993 as if it were a reporting entity.

The amendments to the Financial Reporting Act 1993 are contained in *Part II* of the Bill.

Clause 1 relates to the Short Title and commencement of the Bill.

Except for *clauses 3, 4, 6, 8, 9, 10, 12, 17, and 18*, and the *Second Schedule*, the Bill comes into force on its enactment.

Clauses 3, 4, 6, 8, 9, 10, 12, 17, and 18, and the *Second Schedule* come into force on a date to be appointed by Order in Council on the recommendation of the

Minister of Agriculture. These clauses relate principally to the constitution and share structure of the Board. *Clause 1 (4)* provides that the Minister may not make such a recommendation unless satisfied that the constitution that must be adopted by the Board under the new *section 3AE* has been approved by qualifying companies under the new *section 2A*.

PART I

AMENDMENTS TO DAIRY BOARD ACT 1961

Clause 3 substitutes a new *section 2* in the principal Act relating to the interpretation of terms used in the principal Act. The section includes new definitions of the terms “class”, “commencement date”, “constitution”, “milk”, “milksolids”, “qualifying companies holding shares”, “qualifying dairy produce”, “qualifying export produce”, “qualifying milksolids”, “share”, and “town milk”.

Clause 4 substitutes new *sections 2A* to *2D* for the existing *section 2A*.

The new *section 2A* defines the term “qualifying company”. Shares in the Board will be issued to qualifying companies.

The new *section 2B* defines the term “solvency test” in the same terms as the Companies Act 1993.

The new *section 2C* relates to the obtaining by the Board of industry approval and is similar to the existing *section 2A (1) (a)*.

The new *section 2D* relates to the obtaining by the Board of approval of qualifying companies holding shares.

The new *sections 2C* and *2D* recognise different voting for industry matters and matters relating to shareholding.

Clause 5 inserts new *sections 3AB* to *3AD* into the principal Act.

The new *section 3AB* defines the term “board of directors”, in line with companies legislation, to mean a quorum of the directors of the Board.

The new *section 3AC* provides for the management of the business and affairs of the Board and for the exercise of the Board’s powers to be carried out by the board of directors.

The new *section 3AD* makes the directors of the Board subject to the same duties as company directors. The specific duties are set out in the new *Fourth Schedule* to the Bill modified to the extent necessary to take account of the fact that the Board is a statutory corporation constituted under separate legislation with statutory functions and powers.

Clause 6 inserts new *sections 3AE* to *3AH* into the principal Act.

The new *sections 3AE* to *3AH* relate to the Board’s constitution. The Board is required to adopt, as its constitution, the constitution approved by qualifying companies prior to the coming into force of the Bill. The constitution must contain certain matters required to be contained in it by the Bill and may include other matters relating to shares. The Board will have the power to adopt a new constitution or amend the constitution if it obtains the approval of its qualifying company shareholders.

Clause 7 amends *section 7* of the principal Act relating to extraordinary vacancies.

Under the present section a director may be removed from office by the Governor-General on any of the grounds specified and may resign from office by notice in writing to the Minister of Agriculture. The power to remove a director from office will in future be exercisable by the Minister.

The grounds on which a director may be removed from office are extended to include any failure to comply with the new duties imposed on directors.

Clause 8 substitutes a new *Part IA* (comprising new *sections 15A to 15ZA*) in the principal Act relating to the share structure of the Board, dissolution, and to related matters.

The new *section 15A* requires the Board to issue shares to qualifying companies on the basis of one share for every kilogram of milksolids contained in qualifying export produce and qualifying dairy produce for the season immediately preceding the commencement of the Bill. These shares are to be issued as fully paid.

The new *section 15B* gives the Board the power to issue to qualifying companies, and require those companies to hold, additional shares based on milksolids contained in qualifying export produce and qualifying dairy produce supplied during such periods determined by the Board. Qualifying companies will be required to provide consideration for the issue of such shares.

The new *section 15C* relates to the issue of shares to qualifying companies during a 5-year transition period up to a specified limit determined in accordance with the formulas set out in the section.

The basis of the additional allocation is one share for every kilogram of milksolids contained in town milk processed in the last full season together with either one share for every kilogram of milksolids contained in qualifying export produce or qualifying dairy produce supplied in the highest of the last 3 seasons or shares based on contributions to the reserves of the Board.

The additional allocation will occur only where the qualifying company increases the quantity of milksolids contained in qualifying export produce and qualifying dairy produce during the transition period. These shares will be issued as fully paid.

The new *section 15D* requires shares issued by the Board to have a nominal value.

The new *section 15E* provides that the consideration for the issue of shares is the nominal value of the shares.

The new *section 15F* relates to the rights and powers attaching to shares. Shares issued by the Board will not carry voting rights but will entitle shareholders to dividends declared by the Board.

The new *section 15G* prohibits any alteration to the rights attaching to shares without the approval of qualifying companies holding shares.

The new *section 15H* provides for the issue of different classes of shares.

The new *section 15I* empowers the Board to require a qualifying company to surrender shares held by the company—

- (a) Where the company has ceased to be a qualifying company; or
- (b) On grounds specified in the constitution.

The new *section 15J* applies sections 52 (4) and 56 of the Companies Act 1993 to the surrender of shares. Those sections enable the amount of a distribution to be recovered where the company was insolvent at the time the distribution was made.

The new *section 15K* relates to the consideration payable on the surrender of shares and is similar to clause 20 of the Co-operative Companies Bill currently before Parliament.

The new *sections 15L to 15O*, which relate to the cancellation of surrendered shares and the holding of surrendered shares as treasury stock, are similar to clauses 21 to 24 of the Co-operative Companies Bill.

The new *section 15P* prohibits the transfer, mortgage, or assignment of shares issued by the Board.

The new *sections 15Q and 15R* relate to the requirement to keep a share register and to inspection of the register.

The new *section 15s* applies sections 97 and 100 of the Companies Act 1993 relating to the liability of shareholders.

The new *section 15r* relates to the issue of share certificates.

The new *section 15v* provides that on an amalgamation of qualifying companies, the amalgamated company shall be treated as the holder of the shares held by the amalgamating companies.

The new *section 15w* authorises the Board to pay dividends.

The new *section 15w* allows the Board to pay dividends on the basis of notional shareholdings.

The new *section 15x* sets out the matters that the constitution must contain relating to meetings of qualifying companies holding shares.

The new *section 15y* provides that the Board may be dissolved only by an Act of Parliament. The provisions of the new *Fifth Schedule* will apply in the event that the Board is dissolved. In essence, unless the Board adopts a scheme for the disposition of its assets and liabilities prior to its dissolution, the Board will be deemed to be a company registered under the Companies Act 1993.

The new *section 15z* relates to taxation. The purpose of the clause is to ensure that the consequences of issuing shares and the conversion of the Board into a company in the event of its dissolution are tax neutral.

The new *section 15za* provides that section 17A of the Judicature Act 1908, which relates to the liquidation of bodies other than companies, does not apply to the Board.

Clause 9 effects a consequential repeal.

Clause 10 extinguishes any rights that registered qualifying persons might have under the present Part IA following the repeal of that Part.

Clause 11 changes the word “consent” to “approval” in section 26 (2) of the principal Act.

Clause 12 inserts a new *section 28B* into the principal Act. The new section will allow the Board to establish formulas for the calculation of prices to be paid by it for export produce supplied by manufacturers who are not shareholders in the Board and to pay prices based on such formulas instead of under sections 25A to 26D of the Act. Manufacturers who are paid under the new *section 28B* will not be entitled to receive distributions or interim distributions of the Board’s trading surplus under sections 28 and 28A of the Act.

Clause 13 substitutes a new *section 48A* in the principal Act relating to the delegation of powers by the Board. Under the present section, the Board may delegate its powers to directors and officers of the Board. However the power of delegation cannot itself be delegated. The new section will enable the chief executive of the Board, with the written approval of the Board, to delegate any powers that have been delegated by the Board to the chief executive.

Clause 14 substitutes a new *section 66* in the principal Act relating to the financial statements of the Board. The new section requires the financial statements of the Board and the group financial statements of the Board and its subsidiaries to comply with and be audited in accordance with the Financial Reporting Act 1993.

Clause 15 amends section 67A of the principal Act. Section 67A requires the Board to give a copy of its annual report, financial statements, and the auditor’s report on the financial statements to the Minister and to manufacturers and requires the Minister to lay those documents before Parliament.

The financial statements of the Board will, in future, be required to include the information required to be contained in the annual reports of companies by section 211 (1) (e), (f), and (g) of the Companies Act 1993. As a result, the report of the Board will include entries in the interests register of directors interests, remuneration and other benefits received by directors, and the numbers of employees who received remuneration and other benefits the value of which exceeded \$100,000 during the accounting period concerned.

Clause 16 adds a new *Fourth Schedule* to the principal Act. The new Schedule sets out the duties to which the directors of the Board will be subject. These duties are the same as the duties to which directors of companies are subject under existing companies legislation.

Clause 17 adds a new *Fifth Schedule* to the principal Act. The new Schedule contains provisions that will apply if the Board is ever dissolved.

Clause 18 amends section CF 3 of the Income Tax Act 1994. The effect of the amendment is that payments made by the Board to qualifying companies on the surrender of shares that are held as treasury stock will not be treated as dividends for tax purposes.

PART II

AMENDMENTS TO FINANCIAL REPORTING ACT 1993

Clause 20 substitutes a new definition of the term "reporting entity" in section 2 (1) of the Financial Reporting Act 1993. The definition will now include persons that, although not subject to the Act, are required by any other Act to comply with the Financial Reporting Act 1993 as if they were reporting entities.

Clause 21 amends section 24 of the Act to make it clear that the Accounting Standards Review Board may approve financial reporting standards that apply to persons that are required to comply with the Act as if those persons were reporting entities.

DAIRY BOARD AMENDMENT

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A BILL INTITULED

An Act to amend the Dairy Board Act 1961

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

1. Short Title and commencement—(1) This Act may be cited as the Dairy Board Amendment Act 1995. 5

(2) Except as provided in **subsection (3)** of this section, this Act shall come into force on the date on which this Act receives the Royal assent.

(3) **Sections 3, 4, 6, 8, 9, 10, 12, 17 and 18** of, and the **Second Schedule** to, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council on the recommendation of the Minister. 10

(4) The Minister shall not make a recommendation under **subsection (3)** of this section unless satisfied that the Board has obtained, at a meeting of duly authorised representatives of qualifying companies, or in writing, the approval to the form of the constitution to be adopted by the Board under **section 3AE** of this Act, of qualifying companies (including, as the case requires, successors of qualifying companies) whose aggregate voting milksolids during the most recent complete season and the 2 seasons before it was, in the Board's opinion, more than 75 percent of the aggregate quantity of the voting milksolids of all qualifying companies for the period. 15 20

(5) For the purposes of **subsection (4)** of this section, "qualifying company" has the meaning that term will have in **section 2A** of the principal Act on the coming into force of **section 4** of this Act. 25

PART I

AMENDMENTS TO DAIRY BOARD ACT 1961

2. Part to be read with Dairy Board Act 1961—(1) This Part of this Act shall be read together with and deemed part of the Dairy Board Act 1961* (in this Part of this Act referred to as the principal Act). 30

*1961, No. 5 (R.S. Vol. 26, p. 63)
Amendment: 1992, No. 101

3. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

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

5 “‘Assets’ in relation to the Board, means property of all kinds, both real and personal, of whatever nature and wherever situated; and (without limiting the generality of the foregoing) includes—

10 (a) Property over which the Board has a power of disposition or appointment; and

(b) Any copyright, patent, registered design, trademark, knowhow, or other intellectual property owned by the Board; and

15 (c) Choses in action and money owned by or vested in the Board; and

(d) The Board’s goodwill; and

(e) Rights, interests, and claims in or to property of every kind,—

20 (i) Whether or not arising from, accruing under, created or evidenced by, or the subject of any instrument or other document; and

(ii) Whether liquidated or unliquidated; and

25 (iii) Whether actual, contingent, prospective or vested,—

exercisable by or vested in, or capable of being made by, the Board;—

30 but does not include any property held by the Board pursuant to section 45 of this Act for the purpose of any superannuation scheme or schemes:

“‘Board’ means the New Zealand Dairy Board established under this Act:

35 “‘Board of directors’ has the meaning set out in **section 3AB** of this Act:

“‘Class’, in relation to shares, means a class of shares having attached to them identical rights, privileges, limitations, or conditions:

40 “‘Commencement date’ means the date appointed under **section 1 (3)** of the Dairy Board Amendment Act 1995 for the coming into force of **sections 3, 4, 6, 8, 9, 10, 12, 17, and 18** of, and the **Second Schedule** to, that Act:

45 “‘Commission’ means the New Zealand Dairy Products Marketing Commission established under the Dairy Products Marketing Commission Act 1947:

- “ ‘Constitution’ means the constitution of the Board adopted pursuant to **section 3AE** of this Act as amended from time to time:
- “ ‘Co-operative company’ means—
- “(a) A co-operative dairy company registered under the Co-operative Dairy Companies Act 1949; and
- “(b) A co-operative milk marketing company registered under the Co-operative Companies Act 1956:
- “ ‘Dairy Board’ means the New Zealand Dairy Board established under the Dairy Board Act 1953:
- “ ‘Dairy factory’ means a factory for the time being registered as a manufacturing dairy pursuant to regulations under the Dairy Industry Act 1952:
- “ ‘Dairy produce’ includes—
- “(a) Milk and cream; and
- “(b) Butter, cheese, and all other products of milk or cream, whether derived therefrom by manufacturing processes or otherwise; and
- “(c) Any compound or mixture that contains or is derived from milk, cream, or any product of milk or cream, and that is declared by Order in Council to be dairy produce for the purposes of this Act:
- “ ‘Director’ means a director of the Board:
- “ ‘Export produce’ means dairy produce intended for export; and includes—
- “(a) Any goods or produce manufactured in New Zealand and intended for export that contain more than 30 percent by weight of dairy produce; and
- “(b) Any milk or cream acquired by the Board from a co-operative dairy company for the purposes of manufacture into a product intended for export:
- “ ‘Manufacturer’ means a person who occupies a dairy factory; and, in relation to any dairy factory, means its occupier:
- “ ‘Milk’ means cows milk:
- “ ‘Milksolids’ means the components of milk valued by the Board under section 26 of this Act:
- “ ‘Minister’ means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister is responsible for the administration of this Act:
- “ ‘Occupier’, in relation to any land,—

“(a) Where a person other than its owner has a right to occupy it by virtue of a lease or tenancy granted for a term of 12 months or more, means that person; and

5 “(b) In every other case, means its owner:

“ ‘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

10 season—

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

“(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

20 “(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:

25 “ ‘Qualifying company’ has the meaning set out in **section 2A** of this Act:”

30 “ ‘Qualifying company holding shares’ means a qualifying company to which shares have been issued under any of **sections 15A to 15c** of this Act:

“ ‘Qualifying dairy produce’ means dairy produce which a qualifying company satisfies the Board is disposed of otherwise than to the Board and which, at the time of disposal is—

35 “(a) Owned by the qualifying company; and

“(b) A class of dairy produce which is subject to a notional price fixed by the Board pursuant to section 27 of the Act:

40 “ ‘Qualifying export produce’ means export produce which is supplied to the Board by or on behalf of a qualifying company and which, at the time of supply, is owned by the qualifying company:

45 “ ‘Qualifying milksolids’, in relation to a qualifying company, means the kilograms of milksolids which in the immediately preceding season were contained

- in qualifying export produce or qualifying dairy produce:
- “‘Season’ means a period of 12 months ending with the 31st day of May in any year:
- “‘Secretary’ means the employee of the Board for the time being directed by the Board to be its secretary for the purposes of this Act; and includes any employee of the Board for the time being directed by the Board to be its acting Secretary: 5
- “‘Share’ means a share in the Board issued pursuant to Part 1A of this Act: 10
- “‘Supplying shareholder’ has the same meaning as in section 2 (1) of the Co-operative Dairy Companies Act 1949:
- “‘Town milk’ in relation to a qualifying company, means milk or cream sold by the company for, or for resale for, human consumption in New Zealand in liquid form: 15
- “‘Voting milksolids’,—
- “(a) In relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949, means own-supply milksolids; and 20
- “(b) In relation to a co-operative milk marketing company registered under the Co-operative Companies Act 1956, means milksolids— 25
- “(i) Supplied by the company to a manufacturer who or that is not a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949; 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.” 30
- (2) The following enactments are hereby consequentially repealed: 35
- (a) Section 10 (6) (a) of the Dairy Board Amendment Act 1965;
- (b) Section 2 of the Dairy Board Amendment Act 1972;
- (c) Sections 2 and 3 (2) of the Dairy Board Amendment Act 1980: 40
- (d) Section 3 (1) of the Dairy Board Amendment Act 1988;
- (e) Sections 7 (1) and 10 of the Dairy Board Amendment Act 1992.

4. New sections substituted—(1) The principal Act is hereby amended by repealing section 2A (as inserted by section 4 of the Dairy Board Amendment Act 1988), and substituting the following sections:

5 “**2A. Meaning of ‘qualifying company’**—(1) For the purposes of this Act, but subject to **subsection (2)** of this section, ‘qualifying company’ means a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 in which—

10 “(a) All the shares carrying voting rights in the company are held by supplying shareholders of the company; and

15 “(b) All the shares in the company (other than shares that are held by the company in itself on the surrender of those shares and that are deemed not to be cancelled) are held only by—

 “(i) Supplying shareholders in proportion to milksolids supplied to the company by them; or

20 “(ii) Supplying shareholders who hold a greater or lesser number of shares than they are entitled to hold on the basis of the proportion of milksolids supplied by them to the company; or

25 “(iii) Persons who, in the Board’s opinion, are no longer supplying shareholders but whose shares have yet to be surrendered to the company.

“**(2)** A company is not a qualifying company if the aggregate of—

30 “(a) The number of shares held by supplying shareholders referred to in **subsection (1) (b) (iii)** of this section that exceeds the proportion of milksolids supplied by them to the company; and

“**(b)** The number of shares held by supplying shareholders under **subsection (1) (b) (iii)** of this section—
exceeds 10 percent of the shares issued by the company.

35 “**2B. Meaning of ‘solvency test’**—For the purposes of this Act, the Board satisfies the solvency test if—

“**(a)** The Board is able to pay its debts as they become due in the normal course of business; and

40 “**(b)** The value of the Board’s assets is greater than the value of its liabilities including contingent liabilities.

“**(2)** In determining, for the purposes of this Act, whether the value of the Board’s assets is greater than the value of its liabilities, including contingent liabilities, the board of directors—

“(a) Must have regard to—

“(i) The most recent financial statements of the Board prepared in accordance with **section 66** of this Act; and

“(ii) All other circumstances that the directors know or ought to know affect, or may affect, the value of the Board’s assets and the value of its liabilities, including contingent liabilities: 5

“(b) May rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances. 10

“(3) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—

“(a) The likelihood of the contingency occurring; and

“(b) Any claim the Board is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability. 15

“2C. **Approval of dairy industry**—Where in this Act the Board is forbidden to take any action without the approval of the dairy industry, the Board shall not take the action unless the Board has obtained at a meeting of duly authorised representatives of co-operative companies, or in writing, the approval to the taking of the action of those co-operative companies (including, as the case requires, successors of co-operative companies) whose aggregate voting milksolids during the most recent complete season and the 2 seasons before it was, in the Board’s opinion, more than 75 percent of the aggregate quantity of the voting milksolids of all co-operative companies for the period. 20 25

“2D. **Approval of qualifying companies holding shares**—Where in this Act the Board is forbidden to take any action without the approval of qualifying companies holding shares, the Board shall not take the action unless the Board has obtained— 30

“(a) At a meeting of duly authorised representatives of qualifying companies holding shares, the approval to the taking of the action of those qualifying companies whose qualifying milksolids during the most recent complete season was, in the Board’s opinion, more than 75 percent of the aggregate quantity of qualifying milksolids of those qualifying companies voting on the action (or such higher proportion of qualifying milksolids as the constitution or this Act may specify as being required to the taking of the action); or 35 40

5 “(b) In writing, the approval to the taking of the action of those qualifying companies holding shares whose qualifying milksolids during the most recent complete season was, in the Board’s opinion, more than 75 percent of the aggregate quantity of the qualifying milksolids of all qualifying companies for the period (or such higher proportion of qualifying milksolids as the constitution or this Act may specify as being required to the taking of the action).”

10 (2) Section 4 of the Dairy Board Amendment Act 1988 is hereby consequentially repealed.

15 **5. New sections relating to directors inserted**—The principal Act is hereby amended by inserting, after section 3AA (as inserted by section 2 (1) of the Dairy Board Amendment Act 1992), the following sections:

“3AB. **Meaning of ‘board of directors’**—In this Act, ‘board of directors’ means the directors of the Board constituting a quorum under section 12 (4) of this Act.

20 “3AC. **Management of Board**—(1) The business and affairs of the Board must be managed, and the powers of the Board exercised, by or under the direction or supervision of, the board of directors of the Board.

25 “(2) The board of directors of the Board has all the powers necessary for—

“(a) Managing, and for directing and supervising the management of, the business and affairs of the Board; and

“(b) Exercising the powers of the Board.

30 “3AD. **Duties of directors**—The provisions contained in the **Fourth** Schedule to this Act apply to the directors of the Board.”

35 **6. New section relating to constitution inserted**—The principal Act is hereby amended by inserting, after section 3AD (as inserted by section 5 of this Act), the following sections:

“3AE. **Board to have written constitution**—The Board must have a written constitution and must adopt, as its constitution, the constitution approved in accordance with section 1 (4) of the Dairy Board Amendment Act 1995.

40 “3AF. **Contents of constitution**—The constitution—

“(a) Must contain the matters required by this Act to be contained in it:

“(b) May contain such other matters relating to shares as the Board wishes to include in it.

“**3AG. Effect of constitution**—(1) The constitution has no effect to the extent that it contravenes, or is inconsistent with, this Act. 5

“(2) Subject to this Act, the constitution is binding as between—

“(a) The Board and each qualifying company holding shares; 10
and

“(b) Each qualifying company holding shares—
in accordance with its terms.

“**3AH. Alteration to constitution**—The Board may, with the approval pursuant to **section 2D** of this Act of qualifying companies holding shares, from time to time— 15

“(a) Revoke the constitution and adopt a new one:

“(b) Amend the constitution.”

7. Extraordinary vacancies—Section 7 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections: 20

“(1) A director may at any time be removed from office by the Minister if the Minister is satisfied as to—

“(a) The disability, bankruptcy, neglect of duty, or misconduct of the director; or 25

“(b) The failure of the director to comply with any duty or obligation imposed on the director by the **Fourth Schedule** to this Act.

“(1A) A director may resign from office at any time by giving written notice to the Minister”. 30

8. New Part substituted—The principal Act is hereby amended by repealing Part IA (as inserted by section 9 of the Dairy Board Amendment Act 1992), and substituting the following Part:

“PART IA 35

“CAPITAL AND ASSETS OF BOARD

“**15A. Initial issue of shares**—(1) Subject to **subsection (2)** of this section, the Board shall, as soon as is reasonably practicable after this section comes into force, issue as fully paid to each qualifying company, one share for every kilogram of milksolids contained in the qualifying export produce and 40

qualifying dairy produce of the qualifying company for the season immediately preceding the commencement date.

5 “(2) The Board is not required to issue shares to a qualifying company under **subsection (1)** of this section unless the company provides the Board with such information as the Board requires relating to the company’s qualifying export produce and qualifying dairy produce for that season.

10 “**15B. Issue of additional shares**—(1) The Board may at any time, in accordance with its constitution and this section, issue shares (including shares paid up fully or partly from the reserves of the Board) to a qualifying company.

15 “(2) The Board may, by notice in writing to a qualifying company, require the company to hold such number of shares as is specified in the notice, being a number determined in accordance with the constitution by reference to the number of kilograms of milksolids contained in qualifying export produce and qualifying dairy produce supplied or disposed of during a period or periods and in a ratio determined in accordance with the constitution by the Board.

20 “(3) Where the number of shares which a qualifying company is required to hold pursuant to **subsection (2)** of this section exceeds the number of shares then held by that qualifying company, the directors may issue those additional shares to the company.

25 “(4) As soon as practicable after issuing the shares under **subsection (3)** of this section, the Board must give notice in writing to the qualifying company stating the number of shares issued and the consideration payable for the shares.

30 “(5) The consideration for the issue of the shares is a debt due from the qualifying company to the Board.

“**15C. Issue of shares during transition period**—(1) For the purposes of this section,—

35 “‘Additional allocation’ in relation to a qualifying company, means the number of shares calculated in accordance with the following formulas, whichever is the higher:

$$a = b + c - d$$

$$a = b + e - d$$

where—

a is the additional allocation; and

- b is the number of shares calculated on the basis of one share for every kilogram of milksolids contained in town milk manufactured by the company in the season immediately preceding the commencement date; and 5
- c is the number of shares determined on the basis of one share for every kilogram of milksolids contained in qualifying export produce and qualifying dairy produce supplied or disposed of by the company during whichever of the 3 seasons immediately preceding the commencement date the company produced the highest quantity of milksolids contained in qualifying export produce or qualifying dairy produce; and 10
- d is the number of shares issued to the company pursuant to **section 15A** of this Act; and 15
- e is the number of shares equal to the number obtained by multiplying the company's reserve contribution by the number of shares issued to all qualifying companies pursuant to **section 15A** of this Act: 20

“‘Reserve contribution’ in relation to a qualifying company, means that company's contribution, as determined by the Board, to the growth in the Board's reserves during the period commencing at the beginning of the season ending on the 31st day of May 1981 and ending on the 31st day of May in the year immediately preceding the commencement date, expressed as a percentage of the Board's total reserves as at the 31st day of May in the year immediately preceding the commencement date: 25 30

“‘Transition period’ means the period commencing on the 1st day of June in the year in which the Dairy Board Amendment Act **1995** comes into force and ending on the 31st day of May in the fifth year after that date. 35

“(2) The Board may, in accordance with the constitution, from time to time during the transition period, issue to a qualifying company as shares that the company is required to hold under **section 15B** of this Act, a number of shares not exceeding the additional allocation for the company. 40

“(3) Shares issued to a qualifying company under **subsection (2)** of this section shall be deemed to have been issued as fully paid. 45

5 “(4) The issue to a qualifying company of shares pursuant to this section does not limit to the additional allocation, the number of shares that the company may be required to hold pursuant to **section 15B** of this Act, where the number of such shares exceeds the additional allocation.

“**15D. Nominal value of shares**—(1) Shares issued by the Board must have a nominal value and different classes of shares may have different nominal values.

10 “(2) The nominal value of shares or any class of shares issued by the Board—

“**(a)** Shall be specified in the constitution:

“**(b)** May be altered by the Board in accordance with the constitution.

15 “(3) The Board may, with the approval pursuant to **section 2D** of this Act of qualifying companies holding shares, subdivide or consolidate shares having a nominal value.

“(4) Different classes of shares having different nominal values may be issued with the same rights except in respect of the amount payable on the surrender of the shares.

20 “**15E. Consideration for issue of shares**—The consideration for the issue of shares by the Board must be the nominal value of the shares.

“**15F. Rights and powers attaching to shares**—(1) A share confers on the holder—

25 “(a) The right, subject to **subsection (2)** of this section and to **section 15V** of this Act, to an equal share in dividends authorised by the Board; and

“**(b)** Any other right expressly conferred by this Act on qualifying companies holding shares.

30 “(2) The rights specified in **subsection (1)** of this section may be negated, altered, or added to in accordance with the terms on which the shares or any class of shares are issued.

35 “**15G. Alteration of shareholder rights**—(1) The Board must not, without the approval under **section 2D** of this Act of qualifying companies holding shares, take any action that affects the rights attached to shares.

“(2) For the purposes of **subsection (1)** of this section, the rights attached to a share include—

40 “(a) The rights, privileges, limitations, and conditions attached to the share by this Act or the constitution, including rights to dividends under **section 15V** of this Act:

“(b) The right to have any procedure set out in the constitution for the amendment or alteration of rights observed by the Board:

“(c) The right that a procedure required by the constitution for the amendment or alteration of rights not be amended or altered. 5

“(3) For the purposes of **subsection (1)** of this section, the issue of shares that rank equally with, or in priority to, existing shares as to distributions of capital or income, is deemed to be action affecting the rights attached to the existing shares unless the constitution expressly permits the issue of further shares ranking equally with, or in priority to, those shares. 10

“15H. **Types of shares**—(1) Subject to the constitution, different classes of shares may be issued by the Board.

“(2) Without limiting **subsection (1)** of this section, shares may confer preferential rights to distributions of capital or income. 15

“15I. **Surrender of shares**—(1) Subject to this section, the Board may require a qualifying company holding shares to surrender any or all shares held by the company if—

“(a) The company ceases to be a qualifying company; or 20

“(b) The constitution 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 specified in the constitution; and 25

“(ii) The Board has previously resolved that the surrender of the shares is in the best interests of the Board.

“(2) Shares that are surrendered may be paid for out of the assets of the Board. 30

“(3) The Board must not require the surrender of any shares unless the board of directors has resolved that the Board 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 Board will, immediately after the surrender, satisfy the solvency test and the grounds for that opinion. 35

“(5) If, after the passing of the resolution and before the shares are surrendered, the board of directors ceases to be satisfied on reasonable grounds that the Board 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 40

subsections (3) and (5) of section 56 of the Companies Act 1993 shall apply with such modifications as may be necessary.

5 “(6) 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.

10 “**15J. Application of Companies Act 1993 to surrender of shares**—Sections 52 (4) and 56 of the Companies Act 1993 shall, with such modifications as may be necessary, apply to the surrender of shares under **section 15** of this Act as if the surrender were a distribution.

“**15K. Consideration for surrender of shares**—(1) The consideration for the surrender of shares 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 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 the procedure:

25 “(c) Despite **paragraphs (a) and (b)**, the Board and the qualifying company 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 it were determined under **paragraph (a)**.

30 “(2) If the constitution includes a procedure for determining the consideration for the surrender of shares, it must also make provision for the Board or the company, if either objects to the consideration determined in accordance with the procedure, to have the matter determined in accordance with the procedure by arbitration under with the Arbitration Act 1908.

35 “(3) Notwithstanding anything in the constitution, in determining the consideration for the surrender of shares under any procedure contained in the constitution, no account is to be taken of—

40 “(a) The fact that the qualifying company may cease to be a qualifying company or, if it has ceased to be a

qualifying company, of the reasons for it so ceasing;
or

“(b) Any other factors or circumstances affecting the company.

“(4) The consideration for the surrender of shares is an unsecured debt owed to the qualifying company and, unless the constitution provides otherwise, is payable on the date on which the surrender takes effect. 5

“15L. **Cancellation of shares surrendered**—(1) Subject to sections 15M to 15O of this Act, shares that are surrendered pursuant to section 15I of this Act are deemed to be cancelled immediately the surrender takes effect. 10

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

“(a) The rights and privileges attached to that share expire; and 15

“(b) The share may be reissued, as a share having a nominal value, in accordance with section 15B of this Act.

“15M. **Board may hold its own shares**—(1) For the purposes of this Act and the Income Tax Act 1994, shares that are surrendered under section 15I of this Act shall not be deemed to be cancelled under section 15L of this Act if— 20

“(a) The directors resolve that the shares concerned shall not be cancelled on surrender; and

“(b) The number of shares surrendered, when aggregated with shares then held by the Board pursuant to this section, at the time of surrender, does not exceed 5 percent of the shares previously issued, excluding shares previously deemed to be cancelled under section 15L of this Act. 25

“(2) Shares surrendered pursuant to section 15I of this Act that, pursuant to this section, are not deemed to be cancelled shall be held by the Board in itself. 30

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

“15N. **Rights and obligations of surrendered shares held by Board suspended**—(1) The rights and obligations attaching to a share that the Board holds in itself pursuant to section 15M of this Act shall not be exercised by or against the Board while it holds the share. 40

“(2) Without limiting subsection (1) of this section, while the Board holds a share in itself pursuant to section 15M of this Act,

the Board shall not pay or receive any dividend authorised or payable in respect of the share.

5 “15O. **Reissue of shares held by Board**—(1) **Section 15E** of this Act shall apply to the transfer of a share held by the Board in itself as if the transfer were the issue of a share under **section 15B** of this Act.

10 “(2) Subject to **subsection (1)** of this section, the transfer of a share held by the Board in itself shall not be subject to any provision in this Act or the constitution relating to the issue of shares, except to the extent the constitution expressly applies that provision.

15 “15P. **Shares not transferable**—Except as provided in **section 150** of this Act, shares and the rights attached to shares, whether prospective, contingent, or otherwise, are not capable of—

- “**(a)** Being transferred, assigned, mortgaged, pledged, hypothecated, or otherwise alienated; or
- “**(b)** Passing by operation of law.

20 “15Q. **Secretary to keep register of qualifying companies**—The Secretary shall, in accordance with the constitution, keep a register of qualifying companies holding shares and the number of shares held by each of them.

25 “15R. **Share register to be available for inspection**—(1) Any person may, without charge, inspect the share register at the Board’s principal office during normal business hours.

“**(2)** Any person may obtain a copy of the share register or any part of it on payment of any reasonable charge imposed by the Board and, for that purpose, the Board may charge for—

- 30 “**(a)** Supplying a copy of the share register or any part of it; or
- “**(b)** Allowing the use of equipment under the Board’s control for copying the share register or any part of it.

35 “15S. **Liability of qualifying companies holding shares**—Sections 97 (except subsection (2) (c)) and 100 of the Companies Act 1993 shall apply, with such modifications as may be necessary, to qualifying companies holding shares.

40 “15T. **Share certificates**—The Board shall, in accordance with the constitution, issue share certificates to qualifying companies holding shares.

“15U. **Amalgamation**—(1) Where 2 or more qualifying companies holding shares amalgamate pursuant to the Companies Act 1955 or the Companies Act 1993, as the case may be,—

“(a) The amalgamated qualifying company shall be the holder of all of the shares held by the amalgamating qualifying companies immediately before the amalgamation; and 5

“(b) The Secretary shall amend the share register accordingly. 10

“(2) **Section 15P** of this Act does not apply to any such amalgamation of qualifying companies.

“15v. **Dividends**—(1) Subject to this section, the Board may at any time pay a dividend from its trading surplus or financial reserves to qualifying companies holding shares. 15

“(2) The Board must not pay a dividend unless the board of directors has resolved that the Board will, immediately after the payment of the dividend, satisfy the solvency test.

“(3) The directors who vote in favour of the payment of the dividend must sign a certificate stating that, in their opinion, the Board will, immediately after the payment, satisfy the solvency test and grounds for that opinion. 20

“(4) The Board must not pay a dividend—

“(a) In respect of some but not all the shares in a class; or

“(b) That is of a greater value per share in respect of some shares than in respect of other shares in that class— unless the amount of the dividend in respect of a share is in proportion to the amount paid up on the share. 25

“(5) The provisions of section 56 of the Companies Act 1993 shall apply to the payment of a dividend by the Board with such modifications as are necessary. 30

“(6) The constitution may include provisions relating to dividends, including provisions conferring on the Board—

“(a) Rights to suspend the payment of dividends:

“(b) A lien over the amount of any dividend due and payable by the Board for the payment of money owing to the Board by a qualifying company holding shares. 35

“(7) A qualifying company holding shares may, by notice in writing to the Board signed by or on behalf of the qualifying company, waive its entitlement to receive payment of a dividend. 40

“(8) Nothing in this section limits section 28 or section 28A of this Act.

“(9) 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.

5 “**15w. Payment of dividends on notional shareholding**—Notwithstanding **section 15v** of this Act, the Board may pay dividends to qualifying companies holding shares as if those qualifying companies were, at the time of authorising payment of the dividend, the holders of such shares as the Board estimates that those companies are
10 required to hold pursuant to **section 15b** of this Act.

“**15x. Meetings of qualifying companies holding shares**—The constitution shall include provisions relating to meetings of qualifying companies holding shares, including provisions—

15 “(a) As to the circumstances in which a qualifying company holding shares may call meetings of qualifying companies holding shares, being meetings limited to the consideration of matters affecting shares issued by the Board:

20 “(b) As to the form, content, and timing of a notice which a qualifying company holding shares may give to the Board for the holding of such a meeting:

25 “(c) As to the steps to be taken by the Board on receiving any such notice, including the form, content, and timing of any notices to be given by the Board to qualifying companies holding shares:

“(d) Providing for resolutions in writing to be signed in lieu of a meeting:

30 “(e) As to the chairing and conduct of meetings of qualifying companies holding shares, including adjournments of such meetings:

“(f) As to voting at such meetings, including proxy voting, voting by representatives, and postal voting.

35 “**15y. Dissolution of Board**—(1) The Board shall not be dissolved except by an Act of Parliament.

“(2) The provisions contained in the **Fifth Schedule** to this Act shall apply in relation to the dissolution of the Board.

“**15z. Taxation**—(1) The issue by the Board of shares to a qualifying company under **section 15a** or **section 15c** of this Act—

40 “(a) Does not constitute a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:

“(b) Is not a dividend for the purposes of section CF 2 of the Income Tax Act 1994:

“(c) Is not assessable income of the qualifying company for the purposes of paragraph (a) or paragraph (d) of section BB 4 of the Income Tax Act 1994.

“(2) If the Board is, on its dissolution, deemed pursuant to **Part II of the Fifth Schedule** to this Act to be a company registered under the Companies Act 1993 then, for the purposes of the Inland Revenue Acts (within the meaning of section 3 (1) of the Tax Administration Act 1994),— 5

“(a) On and from the date on which the Board is deemed to be a company, the Board and the company shall be deemed to be the same person; and 10

“(b) All transactions entered into by, and acts of, the Board before that date shall be deemed to have been entered into by, or to be acts of, the company and to have been entered into or performed by the company at the time they were entered into or performed by the Board. 15

“15ZA. **Application of section 17A of Judicature Act 1908**—Nothing in section 17A of the Judicature Act 1908 (as inserted by section 2 of the Judicature Amendment Act 1993) applies to the Board.” 20

9. Consequential repeal—Section 9 of the Dairy Board Amendment Act 1992 is hereby consequentially repealed.

10. Rights of registered qualifying persons under former Part IA to cease—Notwithstanding section 20 of the Acts Interpretation Act 1927, any rights or interests of a person who, before the commencement date, was a registered qualifying person within the meaning of section 2 of this Act (as then in force), being rights or interests under or conferred by Part IA of this Act (as then in force), cease on the commencement date. 25 30

11. Establishing value for components of milk—Section 26 (2) of the principal Act (as substituted by section 7 (1) of the Dairy Board Amendment Act 1988) is hereby amended by omitting the word “consent”, and substituting the word “approval”. 35

12. Formulas for calculation of export prices for export produce acquired from manufacturers who are not qualifying companies—The principal Act is hereby amended by inserting, after section 28A (as inserted by section 40

12 of the Dairy Board Amendment Act 1992), the following section:

5 “28B. (1) The Board may, with the approval of the dairy industry, from time to time, establish formulas for the calculation of prices to be paid by it for export produce it acquires from manufacturers who are not qualifying companies holding shares.

10 “(2) In establishing formulas under this section, the Board shall have regard to the amount that the dairy produce acquired by the Board is then realising, and the market prospects for the season concerned.

“(3) Without limiting the powers of the Board, the Board may establish formulas pursuant to this section so as to achieve or tend to achieve any or all of the following results:

15 “(a) Different prices for different kinds of export produce:

“(b) Different prices for different grades or qualities of export produce:

“(c) Different prices for export produce contained in different packaging:

20 “(d) Different prices for export produce produced in different periods:

25 “(e) Different prices for quantities of export produce made in different degrees of conformity with any manufacturing programme or quota requirements of the Board:

30 “(f) Different prices for export produce from dairy herds different as to the extent to which they are, as the case may be, registered or tested as being free from tuberculosis, brucellosis, or any other disease the Minister, by notice in the *Gazette*, specifies for the purposes of this section.

35 “(4) The prices to be paid by the Board for export produce it acquires from manufacturers who are not qualifying companies holding shares shall be the prices determined in accordance with any formula applying in relation to the export produce acquired established under this section.

40 “(5) Where the Board has established formulas under this section, nothing in sections 25A to 26D, 28, and 28A of this Act shall apply in relation to export produce that the Board acquires from manufacturers who are not qualifying companies holding shares.”

13. Delegation of powers of Board—(1) The principal Act is hereby amended by repealing section 48A (as inserted by

section 10 (1) of the Dairy Board Amendment Act 1980), and substituting the following section:

“48A. (1) Subject to **subsection (2)** of this section, the Board may, either generally or in relation to a particular matter, delegate to a director or officer or employee of the Board any of the functions and powers of the Board under this Act, including the power to execute deeds, but not including this power of delegation. 5

“(2) In any case where the Board has, pursuant to **subsection (1)** of this section, delegated any functions or powers to the chief executive of the Board, the chief executive may, with the prior written approval of the Board, delegate such of those functions or powers as the Board approves to any officer or employee of the Board. 10

“(3) A delegation under this section may be made to— 15

“(a) A specified person; or

“(b) Persons of a specified class; or

“(c) The holder for the time being of a specified office; or

“(d) The holders for the time being of a specified class of offices. 20

“(4) Subject to any general or special directions or conditions given or imposed by the Board or the chief executive, as the case may be, the person to whom any functions or powers are delegated may exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation. 25

“(5) Every person purporting to act pursuant to a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation. 30

“(6) A delegation under this section may be revoked at any time.

“(7) The delegation of a power or function under this section does not—

“(a) Prevent the Board or the chief executive, as the case may be, exercising the same power or function; or 35

“(b) Affect the responsibility of the Board for the actions of the person acting under the delegation.”

(2) Section 10 (1) of the Dairy Board Amendment Act 1980 is hereby consequentially repealed. 40

14. Board to prepare financial statements—(1) The principal Act is hereby amended by repealing section 66 (as substituted by section 12 of the Dairy Board Amendment Act 1977 and amended by section 2 of the Company Law Reform

(Transitional Provisions) Act 1994), and substituting the following section:

5 “66. (1) As soon as practicable after the 31st day of May in each year, the Board shall prepare the following financial statements:

“(a) Statements of the Board’s financial position at the end of the season ending on that date:

“(b) Statements of all changes in the Board’s financial position during the season:

10 “(c) Statements of the Board’s revenue and expenditure during the season:

“(d) All other statements necessary to show fully the Board’s financial position, and the financial results of its proceedings and operations, during the season.

15 “(2) The financial statements of the Board shall, subject to **subsection (1)** of this section, comply with and be audited in accordance with the Financial Reporting Act 1993 as if the Board was a reporting entity within the meaning of that Act.

20 “(3) As soon as practicable after the 31st day of May in each year, the Board shall also prepare financial statements for the Board and every subsidiary (withing the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be) of the Board.

25 “(4) The financial statements referred to in **subsection (3)** of this section shall comply with and be audited in accordance with the Financial Reporting Act 1993 as if the Board was a reporting entity and the Board and its subsidiaries were a group within the meaning of that Act.”

30 (2) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much of the First Schedule as relates to section 66 of the principal Act.

15. Annual report and statements to be laid before House of Representatives—Section 67A of the principal Act
35 (as substituted by section 12 of the Dairy Board Amendment Act 1977 and amended by sections 18 and 19 (2) of the Dairy Board Amendment Act 1992), is hereby amended by adding the following subsection:

40 “(3) The report referred to in **subsection (1)** of this section shall include the matters required to be included in the annual report of a company by paragraphs (e), (f), and (g) of section 211 (1) of the Companies Act 1993, and those paragraphs shall apply as if references to—

“(a) An accounting period were references to the season to which the report of the Board relates; and

“(b) A company were references to the Board; and

“(c) A director or former director were references to a director or former director of the Board.”

5

16. New Fourth Schedule added to principal Act—The principal Act is hereby amended by adding the **Fourth Schedule** set out in the **First Schedule** to this Act.

17. New Fifth Schedule added to principal Act—The principal Act is hereby amended by adding the **Fifth Schedule** set out in the **Second Schedule** to this Act.

10

18. Amendment to Income Tax Act 1994—Section CF 3 (1) (d) (i) of the Income Tax Act 1994 is hereby amended by inserting, after the word “companies”, the words “or **section 15M** of the Dairy Board Act 1961”.

15

PART II

AMENDMENTS TO FINANCIAL REPORTING ACT 1993

19. Part to be read with Financial Reporting Act 1993—This Part of this Act shall be read together with and deemed part of the Financial Reporting Act 1993* (in this Part of this Act referred to as the principal Act).

20

*1993, No. 106

Amendment: 1994, No. 11

20. Interpretation—Section 2 (1) of the principal Act (as amended by section 2 of the Financial Reporting Amendment Act 1994) is hereby amended by repealing the definition of the term “reporting entity”, and substituting the following definition:

25

“ ‘Reporting entity’ means—

“(a) An issuer; or

“(b) A company, other than an exempt company;

or

“(c) A person that is required by any Act, other than this Act, to comply with this Act as if it were a reporting entity:”.

30

21. Functions of Board—Section 24 of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

35

“(a) To review and, if it thinks fit, approve financial reporting standards submitted to it for approval for the purposes of—

“(i) This Act; or

5

“(ii) The Public Finance Act 1989; or

“(iii) Any Act that requires a person to comply with this Act as if that person were a reporting entity.”

SCHEDULES

Section 16

FIRST SCHEDULE

NEW FOURTH SCHEDULE TO PRINCIPAL ACT

Section 3AD

“FOURTH SCHEDULE

PROVISIONS APPLYING TO DIRECTORS OF BOARD

1. Duty of directors to act in good faith and in accord with functions and powers of Board—A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be in accord with the functions and powers of the Board.

Cf. 1993, No. 105, s. 131

2. Exercise of powers in relation to employees—(1) Nothing in clause 1 of this Schedule limits the power of a director to make provision for the benefit of employees of the Board in connection with the Board ceasing to carry on the whole or part of its business.

(2) In subclause (1) of this clause,—

“Employees” includes former employees and the dependants of employees or former employees; but does not include an employee or former employee who is or was a director:

“Board” includes a subsidiary of the Board.

Cf. 1993, No. 105, s. 132

3. Powers to be exercised for proper purpose—A director must exercise a power for a proper purpose.

Cf. 1993, No. 105, s. 133

4. Directors to comply with Act and constitution—A director must not act, or agree to the Board acting, in a manner that contravenes this Act or the constitution.

Cf. 1993, No. 105, s. 134

5. Reckless trading—A director must not—

(a) Agree to the business of the Board being carried on in a manner likely to create a substantial risk of serious loss to the Board’s creditors;
or

(b) Cause or allow the business of the Board to be carried on in a manner likely to create a substantial risk of serious loss to the Board’s creditors.

Cf. 1993, No. 105, s. 135

6. Duty in relation to obligations—A director must not agree to the Board incurring an obligation unless the director believes at that time on reasonable grounds that the Board will be able to perform the obligation when it is required to do so.

Cf. 1993, No. 104, s. 136

7. Director’s duty of care—A director, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,—

(a) The nature of the Board; and

(b) The nature of the decision; and

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

“FOURTH SCHEDULE—*continued*”

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

Cf. 1993, No. 105, s. 137

8. Use of information and advice—(1) Subject to **subclause (2)** of this clause, a director, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

- (a) An employee of the Board whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- (b) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- (c) Any other director or committee of directors or committee appointed under section 13 of this Act upon which the director did not serve in relation to matters within the director's or committee's designated authority.

(2) **Subclause (1)** of this clause applies to a director only if the director—

- (a) Acts in good faith; and
- (b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) Has no knowledge that such reliance is unwarranted.

Cf. 1993, No. 105, s. 138

9. Meaning of “interested”—(1) Subject to **subclause (2)** of this clause, for the purposes of this Schedule, a director is interested in a transaction to which the Board is a party if, and only if, the director—

- (a) Is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) Has a material financial interest in another party to the transaction; or
- (c) Is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is a wholly-owned subsidiary of the Board; or
- (d) Is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or
- (e) Is otherwise directly or indirectly materially interested in the transaction.

(2) For the purposes of this Schedule,—

- (a) A director is not interested in a transaction to which the Board is a party if the transaction comprises only the giving by the Board of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the Board for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security:

FIRST SCHEDULE—*continued*NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*“FOURTH SCHEDULE—*continued*”PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

- (b) A director is not interested in a transaction or proposed transaction between the Board and a co-operative company entered into or to be entered into in the ordinary course of business of the Board by reason only of being a director or a supplying shareholder of that company.

Cf. 1993, No. 105, s. 139

10. Disclosure of interest—(1) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Board, cause to be entered in the interests register and disclose to the board of directors,—

- (a) If the monetary value of the director’s interest is able to be quantified, the nature and monetary value of that interest; or
 (b) If the monetary value of the director’s interest cannot be quantified, the nature and extent of that interest.

(2) For the purposes of **subclause (1)** of this clause, a general notice given to the board of directors to the effect that a director is a director, officer, or trustee of a person named in the notice and is to be regarded as interested in any transaction which may, after the date on which the notice is given to the board of directors, be entered into by the Board with that person, is a sufficient disclosure of interest in relation to that transaction.

(3) A failure by a director to comply with **subclause (1)** of this clause does not affect the validity of a transaction entered into by the Board or the director.

(4) Every director who fails to comply with **subclause (1)** of this clause commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Cf. 1993, No. 103, s. 140

11. Avoidance of transactions—(1) A transaction entered into by the Board in which a director is interested may be avoided by the Board at any time before the expiration of 3 months after the transaction is disclosed to the board of directors.

(2) A transaction cannot be avoided if the Board receives fair value under it.

(3) For the purposes of **subclause (2)** of this clause, the question whether the Board receives fair value under a transaction is to be determined on the basis of the information known to the Board and to the interested director at the time the transaction is entered into.

(4) If a transaction is entered into by the Board in the ordinary course of its business and on usual terms and conditions, the Board is presumed to receive fair value under the transaction.

(5) For the purposes of this clause,—

(a) A person seeking to uphold a transaction and who knew or ought to have known of the director’s interest at the time the transaction was entered into has the onus of establishing fair value; and

(b) In any other case, the Board has the onus of establishing that it did not receive fair value.

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

“FOURTH SCHEDULE—*continued*

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(6) A transaction in which a director is interested can only be avoided on the ground of the director's interest in accordance with this clause.

Cf. 1993, No. 105, s. 141

12. Effect on third parties—The avoidance of a transaction under **clause 11** of this Schedule does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

- (a) From a person other than the Board; and
- (b) For valuable consideration; and
- (c) Without knowledge of the circumstances of the transaction under which the person referred to in **paragraph (a)** of this clause acquired the property from the Board.

Cf. 1993, No. 105, s. 142

13. Application of clauses 10 and 11 in certain cases—Nothing in **clauses 10 and 11** of this Schedule applies in relation to—

- (a) Remuneration or any other benefit given to a director in his or her capacity as a director; or
- (b) An indemnity given to or insurance provided for a director in his or her capacity as a director.

Cf. 1993, No. 105, s. 143

14. Interested director may vote—Subject to any rules adopted by the Board for the purposes of this clause, a director who is interested in a transaction entered into, or to be entered into, by the Board, may—

- (a) Vote on a matter relating to the transaction; and
- (b) Attend a meeting of the board of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- (c) Sign a document relating to the transaction on behalf of the Board; and
- (d) Do any other thing in his or her capacity as a director in relation to the transaction—

as if the director were not interested in the transaction.

Cf. 1993, No. 105, s. 144

15. Use of Board information—(1) A director who has information in his or her capacity as a director or employee of the Board, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except—

- (a) For the purposes of the Board; or
 - (b) As required by law; or
 - (c) In accordance with **subclause (2)** of this clause; or
 - (d) In complying with **clause 10** of this Schedule.
- (2) A director may disclose, make use of, or act on the information if—
- (a) The director is first authorised to do so by the board of directors; and

FIRST SCHEDULE—*continued*NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*“FOURTH SCHEDULE—*continued*”PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(b) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Board.

Cf. 1993, No. 105, s. 145

16. Duties owed to Board—The duties of the directors of the Board set out in this Schedule are owed to the Board and not to qualifying companies holding shares.

Section 17

SECOND SCHEDULE

NEW FIFTH SCHEDULE TO PRINCIPAL ACT

Section 15v (2)

“FIFTH SCHEDULE

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD

PART I

INTERPRETATION

1. Interpretation—In this Schedule, unless the context otherwise requires,—

“Assets” in relation to the Board, means property of all kinds, both real and personal, of whatever nature and wherever situated; and (without limiting the generality of the foregoing) includes—

(a) Property over which the Board has a power of disposition or appointment; and

(b) Any copyright, patent, registered design, trademark, knowhow, or other intellectual property owned by the Board; and

(c) Choses in action and money owned by or vested in the Board; and

(d) The Board’s goodwill; and

(e) Rights, interests, and claims in or to property of every kind,—

(i) Whether or not arising from, accruing under, created or evidenced by, or the subject of any instrument or other document; and

(ii) Whether liquidated or unliquidated; and

(iii) Whether actual, contingent, prospective or vested,—

exercisable by or vested in, or capable of being made by, the Board:

“Court” means the High Court:

“Instrument” includes—

(a) An instrument of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

(b) A judgment, order, or process of a court:

“Liabilities”, in relation to the Board, means liabilities, debts, charges, duties, and obligations of the Board of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere:

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

“FIFTH SCHEDULE—*continued*”

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART I—*continued*

INTERPRETATION—*continued*

“Rights” in relation to the Board, means all rights, powers, privileges, and immunities of the Board, whether actual, contingent, or prospective:

“Undertaking” in relation to the Board, means the assets, rights, and liabilities of the Board.

PART II

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION

1. Application of this Part—This Part of this Schedule shall apply in relation to the dissolution of the Board only if the Board does not adopt, under Part III of this Schedule, a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon the dissolution of the Board.

2. Board deemed to be a company on dissolution—(1) The Board shall, upon its dissolution, be deemed to be a company registered under the Companies Act 1993 under the name “The New Zealand Dairy Board Limited” (in this Part of this Schedule referred to as ‘the company’).

(2) As soon as practicable after the deemed registration of the company, the Registrar of Companies shall issue a certificate of incorporation for the company.

(3) The certificate of incorporation is conclusive evidence that the company was, on the date of dissolution of the Board, registered as a company under the Companies Act 1993.

3. Effect of registration as company—(1) The company so registered shall be the same body corporate as the body established under section 3 of this Act.

(2) The deemed registration of the company does not—

- (a) Create a new legal entity; or
- (b) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or
- (c) Affect the property, rights or obligations of the company; or
- (d) Affect proceedings by or against the company.

(3) Proceedings that could have been commenced or continued by or against the Board before its dissolution may be commenced or continued by or against the company.

(4) The deemed registration of the company does not affect rights, interests, liabilities, or obligations existing immediately before the dissolution of the Board.

(5) On the deemed registration of the company, the undertaking of the Board existing immediately before its dissolution shall continue to belong to and vest in the company without transfer, disposition, assumption or distribution.

(6) All transactions entered into by, and acts of, the Board before the dissolution of the Board shall be deemed to have been entered into by, or to

SECOND SCHEDULE—*continued*NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*“FIFTH SCHEDULE—*continued*”PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*PART II—*continued*BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

be those of, the company and to have been entered into or performed by the company at the time when they were entered into or performed by the Board.

4. Constitution—The Board may, at any time prior to its dissolution, and with the approval, pursuant to **section 20** of this Act, of qualifying companies holding shares, prescribe a form of constitution for the company, which constitution shall, upon the registration of the company, be the constitution of the company

5. Shares—(1) The number of shares in the Board immediately before the dissolution (excluding shares purchased by the Board pursuant to **clause 9** of this Part of this Schedule and not held by the Board under **section 15M** of this Act) shall be the number of shares in the company and those shares shall, subject to the constitution of the company, confer on the holders the rights attaching to shares pursuant to the Companies Act 1993.

(2) Notwithstanding **section 38** of the Companies Act 1993, each qualifying company, not being a qualifying company that has required the Board to purchase the shares held by that company pursuant to **clause 9** of this Part of this Schedule, that was the holder of shares immediately before the dissolution of the Board shall be the holder of the same number of shares with the same nominal value in the company.

(3) The shares in the company shall have attached to them the same liabilities as the shares had immediately before the dissolution of the Board.

6. Directors—(1) The persons holding office as directors of the Board immediately before the dissolution of the Board shall be the directors of the company and shall hold office for the balance of the terms for which those persons held office as directors of the Board or until they vacate office in accordance with the constitution of the company, whichever is earlier.

(2) Within 20 working days after the registration of the company, the board of the company must deliver to the Registrar of Companies for registration under the Companies Act 1993 a notice containing the name and residential address of every person who is a director of the company.

7. Annual return—Within 20 working days after the registration of the company, the board of the company must deliver to the Registrar of Companies for registration under the Companies Act 1993 an annual return for the company that, so far as practicable, contains the information specified in the Fourth Schedule to that Act.

8. Registration as a co-operative company—(1) If the constitution of the company prescribed pursuant to **clause 4** of this Schedule would entitle the company to be registered as a co-operative company under the Co-operative Companies Act 1956, then, with effect from the date of

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

“FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART II—*continued*

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

registration of the company, the company shall be deemed to be registered as a co-operative company under that Act.

(2) As soon as practicable after the registration of the company as a co-operative company, the Registrar of Companies shall issue a certificate of registration under the Co-operative Companies Act 1956 and that certificate is conclusive evidence of the validity of the registration.

9. Purchase of shares by Board—Prior to the dissolution of the Board, the Board shall include in its constitution—

- (a) A procedure that, on the coming into force of any Act of Parliament dissolving the Board, will enable a qualifying company holding shares to require the Board to purchase the shares held by the company on the date immediately preceding the date of dissolution; and
- (b) A procedure for establishing a fair and reasonable price for the purchase of the shares.

10. Court may exempt Board from obligation to purchase shares—

(1) The Board may apply to the Court for an order exempting the Board from an obligation to purchase the shares of a qualifying company pursuant to a procedure included in the constitution of the Board under **clause 9** of this Schedule on the grounds that—

- (a) The purchase would be disproportionately damaging to the company;
or
- (b) The Board cannot reasonably be expected to finance the purchase; or
- (c) It would not be just and equitable to require the Board to purchase the shares.

(2) The Board must apply to the Court for an order exempting the Board from an obligation to purchase the shares of a qualifying company if the Board has resolved that the purchase by the Board would result in the Board failing to satisfy the solvency test.

(3) The Court may, on an application under this clause, make—

- (a) An order exempting the Board from the obligation to purchase the shares:
- (b) An order suspending the obligation to purchase the shares:
- (c) Such other order as it thinks fit.

11. Payment of dividend on repurchased shares—(1) Where the Board is required by a qualifying company holding shares to purchase the shares held by that company pursuant to clause 9 of this Part of this Schedule, the Board may declare and pay a dividend in respect of those shares.

(2) Any such dividend shall be credited against the purchase price of the shares but shall otherwise be treated as a dividend paid by the Board to the qualifying company.

SECOND SCHEDULE—*continued*NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*“FIFTH SCHEDULE—*continued*”PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*PART II—*continued*BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

(3) Dividends paid pursuant to this clause shall be the same amount in respect of each share to be purchased by the Board.

PART III

SALE, TRANSFER, OR OTHER DISPOSITION OF UNDERTAKING BY BOARD

1. Board may adopt scheme for sale, transfer, or other disposition of undertaking on dissolution—(1) The Board may, at any time prior to its dissolution, adopt a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon its dissolution.

(2) The Board shall not adopt a scheme under subclause (1) of this clause unless—

(a) Within 12 months before adopting the scheme, the Board has obtained, at a meeting of duly authorised representatives of qualifying companies holding shares, or in writing, the approval to the scheme, of qualifying companies holding shares (including, as the case requires, successors of qualifying companies) whose aggregate voting milksolids during the most recent complete season and the 2 seasons before it was, in the Board's opinion, more than 90 percent of the aggregate quantity of the voting milksolids of all qualifying companies holding shares for the period; and

(b) The scheme includes—

(i) A procedure that, upon the coming into force of any Act of Parliament dissolving the Board, will enable any qualifying company that did not approve the scheme, to require the Board to purchase the shares held by the company on the day immediately preceding the date of dissolution; and

(ii) A procedure for establishing a fair and reasonable price for the purchase of the shares.

(3) If the Board adopts a scheme in accordance with subclause (1) of this clause,—

(a) The Board shall, upon its dissolution, sell, transfer, or otherwise dispose of the undertaking of the Board in accordance with the scheme; and

(b) The provisions of the scheme relating to the purchase by the Board of shares held by qualifying companies shall be binding on the Board and qualifying companies according to their tenor.

(4) Subject to the constitution of the Board, a qualifying company holding shares may require the Board to hold a meeting of qualifying companies holding shares to consider whether the Board should adopt a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon the dissolution of the Board.

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

“FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART IV

GENERAL PROVISIONS

1. Powers of Board—The Board has all the powers necessary or desirable for giving effect to the provisions of this Schedule.

2. Liability of qualifying companies—If the Board is dissolved, no qualifying company shall be liable by reason only of being a qualifying company or having held shares to make any payment towards or in respect of—

- (a) Any liability of the Board; or
- (b) The costs and expenses of, or any charges or claims made in respect of,—
 - (i) The dissolution of the Board; or
 - (ii) The adjustment among themselves of the rights of qualifying companies who held shares.”