

# **FARMERS' MUTUAL GROUP BILL**

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AS REPORTED FROM THE COMMERCE COMMITTEE

## **COMMENTARY**

### **Recommendation**

The Commerce Committee has examined the Farmers' Mutual Group Bill and recommends that it be passed with the amendments shown in the bill.

The Farmers' Mutual Group Bill is a private bill. The committee reports that the statements in the preamble have been proved to its satisfaction.

### **Conduct of the examination**

The Farmers' Mutual Group Bill was referred to the Commerce Committee on 13 December 1995. The closing date for submissions was 9 February 1996. The committee received and considered four submissions, including a submission from Farmers' Mutual Insurance Association, and a joint departmental submission from the Inland Revenue Department and The Treasury in consultation with the Ministry of Commerce. These two submissions were heard orally. One hour and 40 minutes were spent on the hearing of evidence and consideration took one hour and 15 minutes.

Advice was received from the Inland Revenue Department, The Treasury and the Ministry of Commerce (the ministry).

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

### **Reasons for the bill**

The bill aims to reconstitute the Farmers' Mutual Insurance Association (the association) as a limited liability company under the Companies Act 1993 with the name Farmers' Mutual Insurance Limited (FMI) as a subsidiary of a company incorporated under that Act called Farmers' Mutual Group Limited (FMG). The association provides insurance services and other financial products to its rural membership in New Zealand and Australia.

The association is registered under the Mutual Insurance Act 1955, and is currently the sole remaining entity registered under that Act. The association

considers that an Act is necessary to authorise the association's conversion to a limited liability company under the Companies Act 1993, as the Mutual Insurance Act 1955 contains historical ambiguities and potential restrictions in the ownership and powers of mutual insurance associations which inhibit the development of the association's business, and are having a negative impact on its credit rating under the Insurance Companies (Ratings and Inspections) Act 1994. There is no mechanism in the Mutual Insurance Act 1955 to enable the association to be converted to a company. Accordingly the association promoted the introduction of this private bill to restructure its operations and register under the Companies Act 1993. The bill adopts co-operative features that would otherwise be precluded by the Companies Act 1993 and which may not be possible under the Co-operative Companies Act 1996.

### **Company law issues**

The association said that the new holding company will issue redeemable shares to farmer customers and a mixture of redeemable and ordinary shares to a trust for the benefit of rural dwellers. To vest complete ownership in existing members would, in the opinion of the association, be unfair to members of long standing who have just ceased business with the association, constitute a windfall to new customers and would be unfair among existing members unless there was an attempt at proportionality according to the time and value of historical custom. The bill, as introduced, provided that customer member shares are to be redeemable five years after issue. The association said that a right of redemption underscores the residual mutual or co-operative nature of the group. The intention and expectation of the directors is that redemption will be exceptional. The redeemable shares are to be freely transferable to customers entitled to be members, including by existing members.

The ministry submitted that any company established by the bill should be required to conform to the existing regulatory framework for either companies or co-operative companies. The ministry considered that the bill should only contain modifications to the Companies Act 1993 which are granted to co-operative companies, and only then, if the association can meet the criteria for registration under the Co-operative Companies Act 1996.

The ministry argued that clause 7 of the bill should be amended to require the board of FMG to send to all members notices which contain (among other things) explanations of the constitutions of both FMI and the association. The ministry argued that clause 7 should not require shareholders to notify the board, in writing, of their views. We agree.

The ministry believed that clause 9 should be amended to require an application to the Registrar of Companies for the registration of FMI and FMG to specify the date on which the conversion scheme is to take effect and that the date stated in each application be the same date. We agree.

The ministry submitted that Schedule 1 should be removed from the bill unless the association meets, or specifies in its constitution that it will meet, the 60 percent threshold of the company's shares being held by trading members of the company, within five years of its registration under the Co-operative Companies Act 1996. The ministry argued that if Schedule 1 remains in the bill it should be redrafted to ensure that the modifications to the Companies Act 1993 contained in it are consistent with those in the Co-operative Companies Act 1996. It has been agreed that if FMG is not required to meet the 60 percent threshold on conversion, the modifications should expire after three years.

The ministry argued that clause 13 of the bill and Schedule 2 of the bill (setting out the provisions applying to the redemption of those shares) should be amended. The original suggestion put forward by the association as a compromise solution was that there be a five year sunset period. Subsequently, the ministry and the association have agreed that a period of three years is more appropriate. We agree and recommend accordingly. We understand that the ministry has undertaken to investigate further, the possibility of extending the flexibility given by the provisions of Schedule 1 of the bill to all companies by suitable amendments to the Companies Act 1993. The end of the three year sunset period will not affect any special redeemable shares issued during this period. There will be no retrospective effect on the status of, or rights and obligations attached to, these shares.

### **Tax issues**

Clause 20 of the bill, as introduced, is designed to ensure that no adverse tax consequences arise as a result of the restructuring. It provides for exemption from gift duty on the issue of shares in FMG to policyholders and the trust, for the current association and FMI to be treated as the same person for the purposes of revenue acts, and for the imputation credits standing in the imputation credit account of the association to be transferred to FMI.

The reconstitution involves the incorporation of the association as a company under the Companies Act 1993. The Inland Revenue Department (the department) suggested that there would only ever be one entity in the process of reconstitution and it is merely changing its legal structure, thus the association and the company are the same person and legislation to deem it so is not necessary. On that basis, there is no need to deem the transfer of imputation credits standing in the account of the association to the account of the company. The department said that the Government does not object to tax-neutral corporate restructuring. However, it appears that the tax issues stem from the need for certainty in the application of relevant revenue acts. Any uncertainty should in the view of the department be resolved in the first instance by applying for binding rulings from the Commissioner. Officials do not recommend that the transfer of shares to the policyholders or the trust be made statutorily exempt from gift duty. The issue of shares to policyholders can be dealt with by way of a ruling. The department said that in relation to other demutualisations it has treated the issue of shares to policyholders as not being subject to gift duty.

We therefore recommend that clause 20 be deleted.

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## KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

*(Subject to this Act,)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Steve Maharey

## FARMERS' MUTUAL GROUP

[PRIVATE]

### ANALYSIS

Title	16. Consequential provisions on reconstitution of Association
1. Short Title	16A. Effect of this Act
2. Interpretation	17. Continuity of legal proceedings
3. Meaning of "surplus"	18. Books and documents to remain evidence
4. Act to bind the Crown	19. Registers
5. Objects	21. Continuity of employment
6. Applications to be made by Board	22. Private Act
6A. Application to register holding company as co-operative company	
7. Procedure prior to application	
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9. Reconstitution of Association	
10. Structure of general insurance company	
11. Structure of holding company	
12. Application of Companies Act 1993 and other Acts	
13. Special redeemable shares	
14. Ceasing of application of this Act to holding company	
15. Change of name of Farmers' Mutual Insurance Limited and transfer of general insurance business to general insurance company	

### SCHEDULES

#### Schedule 1

Application to Holding Company of Companies Act 1993

#### Schedule 2

Provisions Applying to Redemption of Shares by Holding Company

### A BILL INTITULED

An Act to provide for—

- 5           **(a) The reconstitution of the Farmers' Mutual Insurance Association as a limited liability company under the Companies Act 1993 with the name "Farmers' Mutual Insurance Limited" and as the subsidiary of a company to be incorporated under that Act with the name "Farmers' Mutual Group Limited":**
- 10           **(b) Various related matters**

## WHEREAS:

- A. The Farmers' Mutual Insurance Association is an association incorporated under the Mutual Insurance Act 1955:
- B. It is expedient in the interests of the members of the Association that— 5

*Struck Out (Unanimous)*

- (a) The Association be reconstituted as a limited liability company under the Companies Act 1993 and having the name "Farmers' Mutual Insurance Limited"; and 10
- (b) The Association be reconstituted as the subsidiary of a holding company to be incorporated under that Act and having the name "Farmers' Mutual Group Limited"; and 15
- (c) The application of the Companies Act 1993 to the holding company be modified in certain respects:

*New (Unanimous)* 20

- (a) The Association is reconstituted as a limited liability company registered under the Companies Act 1993 with the name Farmers' Mutual Insurance Limited; and
- (b) The Association is reconstituted as the subsidiary of a holding company registered under the Companies Act 1993 with the name Farmers' Mutual Group Limited; and 25
- (c) The application of the Companies Act 1993 to the holding company is modified in certain respects; and 30
- (d) The holding company is authorised to become a co-operative company registered under the Co-operative Companies Act 1996: 35

C. The objects of this Act cannot be achieved without the authority of Parliament:

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

5     **1. Short Title**—(1) This Act may be cited as the Farmers' Mutual Group Act 1995.

*Struck Out (Unanimous)*

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

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

“Appointed day” means the date of the certificate of incorporation of the general insurance company referred to in section 9:

15     “Association” means the Farmers' Mutual Insurance Association, an association incorporated under the Mutual Insurance Act 1955:

“Board” means,—

20     (a) Until the appointed day, a majority of the board of directors of the Association:

(b) On and after the appointed day, a majority of the board of directors of the holding company:

25     “Constitution” means the constitution of the holding company or of the general insurance company, as the context requires:

“General insurance company” means the Association reconstituted as a company under this Act:

30     “Group” means the Association and its subsidiaries or the holding company and its subsidiaries, as the context requires:

“Group company” means a member of the group:

“Holding company” means the company referred to in section 11:

*Struck Out (Unanimous)*

35     “*Inland Revenue Acts*” has the same meaning as in section 3 (1) of the Tax Administration Act 1994:

“Instrument” includes—

(a) An instrument (other than this Act) 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 5

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

“Instrument by way of security” has the same meaning as in section 2 of the Chattels Transfer Act 1924:

“Land” has the same meaning as in section 2 of the Land Transfer Act 1952: 10

“Liabilities” means liabilities, debts, charges, duties, and obligations of every description (whether present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere): 15

“Member” means a member of the Association; and includes a person who is a party to a contract of insurance with a subsidiary of the Association:

“Property” means property of every kind, whether tangible or intangible, real or personal, corporeal or incorporeal; and includes— 20

(a) Choses in action and money:

(b) Goodwill:

(c) Rights, interests, and claims of every kind in or to property, whether arising from or accruing under, or created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective: 25

“Registrar” means the Registrar of Companies: 30

“Rights” means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective:

“Scheme” means the scheme for the reconstitution of the Association as a company and as a subsidiary of the holding company to be effected under this Act: 35

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“Security” means a mortgage, submortgage or charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the 40



*Struck Out (Unanimous)*

5 payment of money or for the discharge of any other obligation or liability and, in any case, whether upon demand or otherwise, whether present or future and whether actual or contingent; and includes an agreement or undertaking to give or execute, whether upon demand or otherwise, any of the foregoing:

*New (Unanimous)*

10 "Security"—

15 (a) Means a mortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other obligation or liability and whether on demand or not, present or future, actual or contingent; and

20 (b) Includes an agreement or undertaking to give or execute, whether on demand or not, any of the things specified in **paragraph (a)**:

"Special resolution" means a special resolution passed in the manner prescribed by section 8 (2) of the Mutual Insurance Act 1955:

25 "Subsidiary" in relation to the Association, means a subsidiary within the meaning of section 18A of the Mutual Insurance Act 1955:

30 "Terms" and "terms of issue" in relation to a share in a company, mean the rights, limitations, and conditions attaching to the share under the constitution of the company; and includes any amendments (*thereto*) to those rights, limitations, and conditions:

35 "Trust" means (*the trust to be*) any trust established by the directors of the Association as settlors for the purpose of holding shares in the holding company:

“Undertaking” in relation to the Association, means the property, rights, and liabilities of the Association.

**3. Meaning of “surplus”**—(1) In this Act, “surplus” in relation to a group company, means the amount of the difference between the assets and liabilities of the company that, after prudent provision for insurance exposures and other contingencies, is certified by the Association’s auditors as being a free surplus. 5

(2) For the purpose of calculating a surplus as at the appointed day— 10

(a) Future or contingent liabilities may be taken into account at their estimated present value as at that day and not at their nominal or maturity value; and

(b) Reliance may be placed on financial information contained in or derived from financial statements prepared as at a date that is not earlier than 2 months before the appointed day for the group as it will be constituted immediately after the appointed day. 15

(3) The financial statements referred to in **subsection (2)** may include prudent projections for matters anticipated to occur between the date of the statements and the appointed day. 20

**4. Act to bind the Crown**—This Act binds the Crown and every person whose rights, obligations, or liabilities are affected by this Act. 25

**5. Objects**—The objects of this Act are to—

(a) Reconstitute the Farmers’ Mutual Insurance Association, at present an association incorporated under the Mutual Insurance Act 1955, as a company under the Companies Act 1993 with the name “Farmers’ Mutual Insurance Limited”; and 30

(b) Provide for (a company to be incorporated under that Act) the registration under the Companies Act 1993 of a company with the name “Farmers’ Mutual Group Limited” to be its holding company; and 35

*Struck Out (Unanimous)*

(c) Modify the application of that Act to the holding company.

*New (Unanimous)*

- 5 (c) Modify the application of the Companies Act 1993 to the holding company; and  
(d) Authorise the holding company to become a co-operative company registered under the Co-operative Companies Act 1996.

10 **6. Applications to be made by Board**—(1) The board may deliver to the Registrar applications in respect of the (*incorporation*) registration under the Companies Act 1993 of the Association as the general insurance company and of the holding company.

(2) The applications must comply with section 12 of that Act except that,—

- 15 (a) In the case of the general insurance company, the board (*shall*) may be the applicant on behalf of the holding company; and

*Struck Out (Unanimous)*

- 20 (b) In the case of the holding company, the board shall be the applicant on behalf of the Trust and the members who are to receive initial shares in the holding company, but is not required to name or identify the members individually in the application:

*New (Unanimous)*

- 25 (b) In the case of the holding company,—  
(i) The board may be the applicant on behalf of the members who are to receive initial shares in the holding company; or  
(ii) If the trust and members are to receive initial shares in the holding company under section 11 (b) (i),  
30 the board may be the applicant on behalf of those members and the trust:  
(ba) The board is not required to name or identify the members individually in the application:

- 35 (c) Two directors of the Association may sign the (*application*) applications and any other documents required to accompany (*it*) them:

(d) Subsection (1) (d) (i) of that section does not apply to—

(i) The holding company's shares in the general insurance company:

*Struck Out (Unanimous)*

(ii) The Trust's shares and the members' shares in the holding company. 5

*New (Unanimous)*

(ii) The members' shares and any shares of the trust in the holding company:

(e) Subsection (1) (e) of that section does not apply. 10

(2) The constitutions of the companies must be the same as the constitutions referred to in the notice to members under **section 7** or approved by members under **section 8**, as the case may be.

(3) The applications must specify the date on which the board proposes that the scheme take effect, and be accompanied by— 15

(a) A certificate signed by not less than 2 directors of the Association certifying that the requirements of **section 7** of this Act have been complied with; and 20

(b) A copy of the resolution of the board referred to in **paragraph (a)** of **subsection (1)** of **section 8** or of the special resolution referred to in **paragraph (b)** of that subsection, as the case may be.

*New (Unanimous)* 25

**6A. Application to register holding company as co-operative company—**(1) The board may deliver to the Registrar an application under section 7 of the Co-operative Companies Act 1996 for registration of the holding company as a co-operative company. 30

(2) The application may be made either together with the application for registration under **section 6** or at any time after the registration of the company under the Companies Act 1993.

**7. Procedure prior to application**—Before making applications under **section 6** the board must ensure that—

(a) Notices have been sent to each member of the Association containing—

5 (i) An explanation of the scheme and an explanation of the proposed *(constitution)* constitutions of the general insurance company and of the holding company dealing, in each case, with the matters likely to have material significance to the members in their capacities as members and policyholders:

10 (ii) A statement that members are entitled to obtain a copy of the *(constitution)* constitutions from the Association on request:

15 (iii) A statement of the locations at which copies of the *(constitution)* constitutions may be inspected by members:

20 (iv) A statement requesting the member to advise the board by a date specified in the statement, being a date not earlier than 30 days after the date on which the statement is sent to the member, whether the member is opposed to the scheme and the adoption of the constitution *(and, if the member is opposed, of the member's reasons)* of the holding company:

25 (v) A statement that if 10% or more of the members advise the board by the date specified in the statement that they oppose the scheme and the adoption of the constitution, a meeting of the members will be held for the purpose of voting on those matters:

30 (vi) A statement that unless 10% of the members advise the board that they oppose the scheme and the adoption of the constitution, the board will make an application to the Registrar under **section 6** and that the scheme will proceed:

35 (b) Notice of the scheme and of the date on which it is expected to take effect is published in a newspaper circulating daily, except on Sundays, in each province in which members reside and in which the Association carries on business and a copy of the notice is sent to each member:

40 (c) The scheme and the constitutions of the general insurance company and the holding company have been approved in accordance with **section 8**.

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**8. Approval of scheme**—For the purposes of **section 7 (c)**, the scheme and the constitutions of the general insurance company and the holding company are approved if—

- (a) Fewer than 10% of the members advise the board that they oppose the scheme, and the adoption of the constitution of the holding company and the board approves the scheme and the adoption of the constitutions of both the general insurance company and the holding company; or 5
- (b) The scheme and the adoption of the constitutions of the general insurance company and the holding company are approved by a special resolution passed at a duly convened meeting of the members. 10
- (2) For the purposes of **subsection (1) (b)**,—
- (a) Members must have the right to vote in person or by proxy: 15
- (b) Notice of meeting sent to each member must be accompanied by a form of appointment of a proxy that enables the member to direct the member's proxy how to vote at the meeting. 20

**9. Reconstitution of Association**—(1) As soon as practicable after receiving applications that comply with **section 6**, the Registrar must issue—

- (a) A certificate of incorporation of the general insurance company with the name “Farmers’ Mutual Insurance Limited”; and 25
- (b) A certificate of incorporation of the the holding company with the name “Farmers’ Mutual Group Limited”.
- (2) The certificates must be issued on the later of—
- (a) The date specified in the applications as the date on which the board proposes that the scheme take effect; and 30
- (b) The date on which the applications are received by the Registrar.
- (3) On the date stated in the certificate of incorporation of the general insurance company, the Association ceases to be an association incorporated under the Mutual Insurance Act 1955 and is a company incorporated under the Companies Act 1993. 35
- (4) The certificate of incorporation of the general insurance company is conclusive evidence— 40
- (a) That the requirements of this Act have been complied with; and
- (b) That, on and after the date stated in the certificate, the Association is a company incorporated under the

Companies Act 1993 with the name "Farmers' Mutual Insurance Limited".

(5) The certificate of incorporation of the holding company is conclusive evidence—

5 (a) That the requirements of this Act have been complied with; and

(b) That, on and after the date stated in the certificate, the company is incorporated under the Companies Act 1993 with the name "Farmers' Mutual Group Limited".

10 (6) Nothing in **subsection (4) (b)** prevents the general insurance company from changing its name and nothing in **subsection (5) (b)** prevents the holding company from changing its name.

15 (7) As soon as practicable after the issue of the certificate of incorporation of the general insurance company, the Registrar must give notice in the *Gazette* stating that the Association has ceased to be an association incorporated under the Mutual Insurance Act 1955 and is a company incorporated under the Companies Act 1993.

20 **10. Structure of general insurance company**—On the appointed day—

(a) The subscribed capital of the general insurance company is the lesser of—

(i) \$20 million; and

25 (ii) The surplus of the company on that day:

(b) The subscribed capital of the general insurance company is represented by ordinary voting shares in the general insurance company that are deemed to have been issued to the holding company:

30 (c) The holding company is deemed to have provided consideration for the issue of the ordinary voting shares in the general insurance company of an amount equal to the value of the shares in the general insurance company on the appointed day determined as if the shares referred to in **paragraph (g)** had not then

35 (d) The constitution of the general insurance company is the constitution of the company that accompanied the application under **section 6**:

40 (e) The directors of the general insurance company are the persons who held office as directors of the Association immediately before the appointed day:

- (f) The directors of the general insurance company hold office on the terms and conditions set out in the constitution of the company:
- (g) The Association's shares in subsidiaries vest in the holding company: 5
- (h) The consideration for the vesting in the holding company of the shares referred to in **paragraph (g)**—
- (i) Is an amount equal to the cost of the shares as recorded in the books of account of the Association immediately before the appointed day: 10
- (ii) Takes the form of a loan by the general insurance company to the holding company repayable on demand.

**11. Structure of holding company**—On the appointed day— 15

- (a) The initial subscribed capital of the holding company is the lesser of—
- (i) \$20 million; and
- (ii) The surplus of the company on that day:
- Struck Out (Unanimous)* 20

- (b) The initial subscribed capital of the holding company shall be represented by shares that shall be deemed to have been issued at a price of \$1.00 each as follows:
- (i) One hundred special redeemable shares to every person who was a member immediately before the appointed day: 25
- (ii) Ten million ordinary shares to the trust:
- (iii) The remaining shares, as special redeemable shares, to the trust: 30

*New (Unanimous)*

- (b) The initial subscribed capital of the holding company is represented by special redeemable shares that are deemed to have been issued,—
- (i) If the board so resolves before notices are sent to members under **section 7**, up to half of those shares to the trust and the rest to every person who was a member immediately before the appointed day; or 35



*New (Unanimous)*

(ii) If **subparagraph (i)** does not apply, in equal numbers to every person who was a member immediately before the appointed day:

- 5 (c) The holding company is deemed to have received, as consideration for the issue of the shares, the shares in the general insurance company deemed to have been issued to the holding company under **section 10 (b)** at their value on the appointed day determined as if the shares referred to in **section 10 (g)** had not then vested in the holding company:
- 10 (d) The constitution of the holding company is the constitution of the company that accompanied the application under **section 6**:
- 15 (e) The directors of the holding company are the persons who held office as directors of the Association immediately before the appointed day:
- (f) The directors of the holding company hold office on the terms and conditions set out in the constitution of the company.
- 20

**12. Application of Companies Act 1993 and other Acts—**(1) The Companies Act 1993 applies to the general insurance company.

25 (2) The Companies Act 1993 applies to the holding company subject to the modifications set out in **Schedule 1**.

(3) *(Subject to this Act,)* The provisions of any other Act applying to the conduct of insurance business by the Association immediately before the appointed day continue to apply to the conduct of insurance business by the general insurance company on and after the appointed day.

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*New (Unanimous)*

(4) **Subsection (3)** is subject to this Act.

**13. Special redeemable shares—**(1) Subject to its constitution and to the terms of issue of the shares, the holding company may—

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- (a) Issue shares that are redeemable within the meaning of section 68 of the Companies Act 1993 and that are called “special redeemable shares”; and

- (b) Pay for the shares redeemed out of the assets of the company.

*Struck Out (Unanimous)*

(2) The provisions of the **Second Schedule** to this Act apply to special redeemable shares.

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*New (Unanimous)*

(2) **Schedule 2** applies to special redeemable shares.

(3) Nothing in sections 58 to 65 (which relate to the acquisition by a company of its own shares) and sections 69 to 75 (which relate to the redemption of shares) of the Companies Act 1993 apply to special redeemable shares issued under this section.

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(4) Nothing in this section or **Schedule 2** limits or affects the power of the holding company to acquire shares under sections 58 to 65 of the Companies Act 1993 or to issue and redeem shares, other than special redeemable shares, under sections 68 to 75 of that Act.

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**14. Ceasing of application of this Act to holding company** —(1) The holding company may resolve by special resolution that this Act ceases to apply to the holding company.

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(2) The board must deliver to the Registrar for registration—

(a) A copy of the special resolution; and

(b) A copy of a new constitution of the company that takes account of the fact that this Act does not apply to the company.

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*Struck Out (Unanimous)*

(3) This Act ceases to apply to the holding company on the date stated in the special resolution, being a date not earlier than the date on which the documents referred to in **subsection (2)** of this section are delivered to the Registrar.

30

*New (Unanimous)*

(3) This Act ceases to apply to the holding company on the earlier of the following dates:

- 5 (a) The date stated in any special resolution referred to in **subsection (1)**, being a date not earlier than the date on which the documents referred to in **subsection (2)** are delivered to the Registrar:
- (b) The third anniversary of the date of registration of the holding company.

- 10 (4) Nothing in **subsection (3)** affects—
- (a) The status of the company; or
- (b) The rights and obligations of the company; or
- (c) The validity, effect, or consequences of anything already done under, or effected by, this Act.

15 *New (Unanimous)*

(4A) Nothing in **subsection (3)** affects any special redeemable shares issued before this Act ceases to apply to the holding company. In particular, **Schedule 2** continues to apply to those shares.

- 20 (5) Nothing in this section prevents the holding company being registered as a co-operative company under the Co-operative Companies Act (*1995*) 1996.

**15. Change of name of Farmers' Mutual Insurance Limited and transfer of general insurance business to general insurance company—**(1) On the appointed day the name of the subsidiary of the Association called "Farmers' Mutual Insurance Limited" changes to "Former FMI Limited".

- 25 (2) The Registrar must, as soon as practicable, enter the new name of the company on the New Zealand register and issue a
- 30 new certificate of incorporation of the company under its new name.

*Struck Out (Unanimous)*

35 (3) On the appointed day the engagements, assets, and liabilities of Former FMI Limited, other than the engagements, assets, and liabilities relating to its residual life insurance

*Struck Out (Unanimous)*

business, shall, with effect on and after the 1st day of April 1996, be deemed to have vested in and to have become the engagements, assets, and liabilities of the general insurance company.

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*New (Unanimous)*

(3) If the directors of Former FMI Limited so resolve before the appointed day, on the appointed day or on the first day of the financial year of the holding company commencing after the appointed day (whichever the directors determine), the engagements, assets, and liabilities of Former FMI Limited, other than those relating to its residual life insurance business, vest in and become the engagements, assets, and liabilities of the general insurance company.

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(4) **Sections 16 to 19** apply in relation to the engagements, assets, and liabilities that vest in and become those of the general insurance company as if references in those sections to the Association were references to Former FMI Limited.

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*Struck Out (Unanimous)*

(5) Except for the purposes of the Income Tax Act 1994, the consideration for the vesting of the engagements, assets, and liabilities is the net book value of those engagements, assets, and liabilities as at the close of the 31st day of March 1996.

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(6) The consideration for the vesting of the engagements, assets, and liabilities is deemed to take the form of a loan by Former FMI Limited to the general insurance company, repayable on demand.

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**16. Consequential provisions on reconstitution of Association—**(1) *(Without limiting section 9 of this Act and for the avoidance of doubt, it is hereby declared that, on and after the appointed day, the undertaking of the Association shall be the undertaking of the general insurance company and:)* To avoid doubt, on and after the appointed day, the undertaking of the Association vests in the general insurance company and:

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- 5 (a) A reference (express or implied) to the Association in any other Act, or in any regulation, order, or notice made or given under any enactment, or in any contract, instrument, register, record, notice, security, document, or communication made, given, passed or executed before or after the appointed day (*shall be read and construed as*) is a reference to the general insurance company:
- 10 (b) Any holder for the time being of a particular office within the Association holds that office within the general insurance company:
- 15 (c) A reference (express or implied) to the holder for the time being of a particular office within the Association in any instrument made, given, passed, or executed before the appointed day (*shall be read and construed as*) is a reference to the person for the time being holding that office in the general insurance company:

*Struck Out (Unanimous)*

- 20 (d) Except for—
- (i) Members of the Association becoming shareholders in the holding company; and
- (ii) The cancellation of obligations under premium notes as provided in **subsection (3)** of this section,—
- 25 the relationship between the Association or a subsidiary and a customer or reinsurer shall continue to be the same relationship and the same rights and liabilities shall exist between them as existed immediately before the appointed day:

*New (Unanimous)*

- 30 (d) The relationship between the Association or a subsidiary and a customer or reinsurer continues as the same relationship and the same rights and liabilities exist between them as existed immediately before the appointed day, except for—
- 35 (i) Members of the Association becoming shareholders in the holding company; and
- (ii) The cancellation of obligations under premium notes by **section 16A (2)**:

- (e) All contracts (including contracts of employment), agreements, conveyances, deeds, leases, licences, securities, and other instruments, undertakings, and notices (whether or not in writing) entered into by, made with, given to or by, or addressed to the Association (whether alone or with any other person) before the appointed day and subsisting immediately before the appointed day are, to the extent that they were previously binding on and enforceable by, against, or in favour of the Association, binding on and enforceable by, against, or in favour of the general insurance company as fully and effectually in every respect as if, instead of the Association, the general insurance company had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed, as the case may be: 5
- (f) An instruction, order, direction, mandate, or authority given to the Association and subsisting immediately before the appointed day is deemed to have been given to the general insurance company: 10
- (g) A security held by the Association as security for a debt or other liability to the Association incurred before the appointed day is available to the general insurance company as security for the discharge of that debt or liability and, where the security extends to future or prospective debts or liabilities, is available as security for the discharge of debts or liabilities to the general insurance company incurred on or after the appointed day; and, in relation to a security, the general insurance company is entitled to all the rights and priorities, however they arise, and is subject to all liabilities to which the Association would have been entitled or subject if this Act had not been passed: 15
- (h) All the rights and liabilities of the Association as bailor or bailee of documents or chattels vest in and are assumed by the general insurance company: 20
- (i) A negotiable instrument or order for payment of money which, before or on the appointed day, is drawn on or given to or accepted or endorsed by the Association or payable at a place of business of the Association, unless the context otherwise requires, has the same effect on and after the appointed day as if it had been drawn on or given to or accepted or endorsed by the general insurance company instead 25
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of the Association or was payable at the place of business of the general insurance company:

- (j) A reference (express or implied) to the Association in any notice or other communication served, given, or sent on or after the appointed day in relation to any instrument or other document subsisting immediately before the appointed day (*shall, unless the context otherwise requires, be read as*) is, unless the context otherwise requires, a reference to the general insurance company.

*Struck Out (Unanimous)*

(2) Subject to **subsection (3)** of this section, nothing effected or authorised by this Act—

- (a) Shall be regarded as placing the Association or the general insurance company or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong; or
- (b) Shall be regarded as placing the Association or the general insurance company or any other person in breach of—
  - (i) Any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or
  - (ii) The Privacy Act 1993 or any other enactment, rule of law, or contractual provision relating to the collection, use, or disclosure of any information; or
- (c) Shall release any surety wholly or in part from all or any of the surety's obligations; or
- (d) Shall be regarded as giving rise to a right for any person to—
  - (i) Terminate or cancel or modify any contract or agreement; or
  - (ii) Enforce or accelerate the performance of an obligation; or
  - (iii) Require the performance of an obligation not otherwise arising for performance; or
- (e) Shall invalidate or discharge any contract or security; or
- (f) Shall affect the rights of the general insurance company in respect of any promise, covenant, warranty, or guarantee given to it by any person relating to the liabilities of the Association.

*Struck Out (Unanimous)*

(3) On and after the appointed day the obligations of members, if any, in respect of premium notes terminates.

(4) The general insurance company succeeds to the undertaking of the Association as if it had been the undertaking of the company before the appointed day, and is deemed to have, and to have had at all material times, full power and authority to conduct the business of the Association as a company under the Companies Act 1993 notwithstanding any constraints, limitations, requirements for privilege, specified procedures, or incapacities which may have affected the Association under the Mutual Insurance Act 1955 but not a company under the Companies Act 1993.

*New (Unanimous)*

**16A. Effect of this Act—**(1) Nothing effected or authorised by this Act—

- (a) Places the Association or the general insurance company or any other person in breach of contract or confidence or makes any of them guilty of a civil wrong; or
- (b) Places the Association or the general insurance company or any other person in breach of—
  - (i) Any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment of property or the disclosure of information; or
  - (ii) The Privacy Act 1993 or any other enactment, rule of law, or contractual provision relating to the collection, use, or disclosure of information; or
- (c) Releases a surety wholly or in part from an obligation; or
- (d) Gives rise to a right for a person to—
  - (i) Terminate or cancel or modify a contract or agreement; or
  - (ii) Enforce or accelerate the performance of an obligation not otherwise arising for performance; or
  - (iii) Require the performance of an obligation not otherwise arising for performance; or
- (e) Invalidates or discharges a contract or security; or



*New (Unanimous)*

- 5 (f) Affects the rights of the general insurance company in respect of a promise, covenant, warranty, or guarantee given to it by a person relating to the liabilities of the Association.
- (2) The obligations of members, if any, in relation to premium notes terminates on the appointed day.
- 10 (3) The general insurance company succeeds to the undertaking of the Association as if it had been the undertaking of the company before the appointed day, and has, and has always had at all material times, full power and authority to conduct the business of the Association as a company under the Companies Act 1993 regardless of any constraints, limitations, requirements for privilege, specified procedures, or
- 15 incapacities that may have affected the Association under the Mutual Insurance Act 1955 but not a company under the Companies Act 1993.

**17. Continuity of legal proceedings**—(1) This section applies to—

- 20 (a) Any action, arbitration, or proceeding, or cause of action, arbitration, or proceeding which, immediately before the appointed day, is pending or existing by, against, or in favour of the Association or to which the Association is a party:
- 25 (b) Any cause of action, arbitration, or proceeding that arises on or after the appointed day in respect of any contract entered into by the Association or any act done or omitted to be done by or to the Association, as the case may be, before the appointed day that would, but for this Act, be available to, against, or in
- 30 favour of or to which the Association could have been a party.
- (2) Any action, arbitration, or proceeding and any cause of action, arbitration, or proceeding to which this section applies (shall not abate or be discontinued or be prejudicially affected by this Act, but) may be prosecuted, and without amendment to any writ, pleading, or other document, continued and enforced by, against, or in favour of the general insurance company to the
- 35 same extent that it might have been prosecuted, continued,

and enforced by, against, or in favour of the Association if this Act had not been passed.

Cf. 1994, No. 3, s. 6

**18. Books and documents to remain evidence**—(1) Any document, matter, or thing which, if this Act had not been passed, would have been admissible in evidence in respect of any matter for or against the Association is, on and after the appointed day, admissible in evidence in respect of the same matter for or against the general insurance company. 5

(2) In this section, “document” has the same meaning as in section 2 (1) of the Evidence Amendment Act (No. 2) 1980. 10

Cf. 1994, No. 3, s. 7

**19. Registers**—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers is obliged solely by reason of this Act to change the name of the Association to that of the general insurance company in those books or registers or in any document. 15

(2) The presentation to any Registrar or other person of any instrument (whether or not comprising an instrument of transfer) by the general insurance company— 20

(a) Executed or purporting to be executed by the company; and

(b) Relating to any property held immediately before the appointed day by the Association; and 25

(c) Containing a recital that the Association has been reconstituted as the general insurance company by virtue of this Act,—

is, in the absence of evidence to the contrary, sufficient evidence that the property is vested in the general insurance company. 30

(3) Without limiting **subsection (1)** or **subsection (2)**, where any security issued by any person or any rights or interests in property of any person were, immediately (*prior to*) before the appointed day, vested in the Association, that person, on presentation of satisfactory evidence of the reconstitution of the Association must, despite any other enactment or rule of law or the provisions of any instrument, register or authorise the registration of the general insurance company as the holder of that security or as the person entitled to such rights or interests, as the case may be. 35 40

(4) For the purposes of **subsection (3)**, satisfactory evidence of the reconstitution of the Association includes—

(a) A copy of the certificate of incorporation of the general insurance company; and

5 (b) A certificate signed by the chairperson of the general insurance company or by an officer of the general insurance company acting under delegation from the chairperson, stating that the Association has been reconstituted as the general insurance company.

10 (5) In **subsection (3)**, “security” has the meaning given in section 2 (1) of the Securities Act 1978 as well as the meaning given in **section 2** of this Act.

*Struck Out (Unanimous)*

(6) Except as provided in this section, nothing in this Act derogates from the provisions of the Land Transfer Act 1952.

*New (Unanimous)*

15 (6) Apart from this section, this Act does not affect the application of the Land Transfer Act 1952.

Cf. 1994, No. 3, s. 8

*Struck Out (Unanimous)*

20 **20. Taxes and duties**—(1) For the purposes of the Goods and Services Tax Act 1985, the transfer provided for in **section 15 (3)** of this Act is deemed to be a supply of a taxable activity as a going concern.

25 (2) The issue to the holding company of shares in the general insurance company pursuant to **section 10 (b)** of this Act is not a dutiable gift within the meaning of section 2 (2) of the Estate and Gift Duties Act 1968.

(3) The issue to members and the trust of shares in the holding company pursuant to **section 11 (b)** of this Act is not—

30 (a) A dutiable gift within the meaning of section 2 (2) of the Estate and Gift Duties Act 1968:

(b) A dividend within the meaning of section CF 2 of the Income Tax Act 1994.

35 (4) Sections GD 1 and GD 2 of the Income Tax Act 1994 do not apply to the transaction referred to in **section 10 (g)** of this Act.

*Struck Out (Unanimous)*

(5) For the purposes of the Income Tax Act 1994, the assets and liabilities of Former FMI Limited vested in the general insurance company pursuant to **section 15 (3)** of this Act shall be deemed to have vested in that company at the values at the close of the 31st day of March 1996 recorded in the books of account of the Association for income tax purposes. 5

(6) Sections FB 3, FB 4, GD 1, GD 2, and GD 11 of the Income Tax Act 1994 do not apply to the transaction referred to in **section 15 (3)** of this Act. 10

(7) For the purposes of the definition of available subscribed capital in section OB 1 of the Income Tax Act 1994 in relation to the holding company, the value, as at the appointed day, of the shares in the general insurance company issued to the holding company pursuant to **section 10 (b)** of this Act shall be deemed to be the consideration received by the holding company in respect of the issue of the shares referred to in **section 11 (b)** of this Act, such consideration being apportioned between the different classes of shares referred to in **section 11 (b)** of this Act in accordance with the following formula: 15 20

$$\frac{a}{b} \times c$$

where:

- a is the number of shares in the particular class; and
- b is the total number of shares referred to in **section 11 (b)** of this Act; and
- c is the amount of the consideration. 25

(8) Subject to **subsection (9)** of this section, for the purposes of the Inland Revenue Acts and any other enactment that imposes or provides for the collection of a tax, duty, levy, rate, or other charge,—

- (a) On and from the appointed day, the Association and the general insurance company shall be deemed to be the same person; and 30
- (b) All transactions entered into by, and acts of, the Association before the appointed day shall be deemed to have been entered into by, or to be acts of, the general insurance company and to have been entered into or performed by the general insurance 35

*Struck Out (Unanimous)*

company at the time they were entered into or performed by the Association.

- 5 (9) Any credit balance in the Association's imputation credit account as at the appointed day shall be transferred on the appointed day to the imputation credit account to be opened by the general insurance company and, for the purposes of section ME 5 (1) (i) of the Income Tax Act 1994, the credits making up that credit balance shall be determined by applying 10 the principles of section ME 5 (4) of that Act and shall be deemed to have arisen in the general insurance company's imputation credit account at the same time as they were deemed to have arisen in the Association's imputation credit account under section ME 4 (2), as modified by section ME 15 5 (4) (b), of that Act.

**21. Continuity of employment**—Without limiting the generality of **section 9**, the following provisions have effect on and after the appointed day in respect of employees of the Association:

- 20 (a) On the appointed day each employee of the Association becomes an employee of the holding company and, for the purposes of every enactment, law, award, determination, contract, and agreement relating to the employment of each such employee, the contract 25 of employment of that employee is deemed to have been unbroken and the period of service with the Association is deemed to have been a period of service with the holding company; and
- 30 (b) The terms and conditions of employment of each such employee continue until duly varied; and
- (c) No such employee is entitled to receive any payment or other benefit by reason only of the employee ceasing, by virtue of this Act, to be an employee of the Association.

35 **22. Private Act**—This Act is a Private Act.

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## SCHEDULES

## Section 12 (2)

## SCHEDULE 1

APPLICATION TO HOLDING COMPANY OF COMPANIES ACT 1993

*Struck Out (Unanimous)*

1. The term "distribution" in section 2 (1) does not include the crediting or payment of rebates, discounts, or other benefits calculated by reference to the level or value of business transacted by a shareholder of the holding company with a group company and that are of a kind that are, or would be likely to be, offered to persons who are not shareholders.

2. Section 36 (2) applies subject to section 53 as modified by clause 5 of this Schedule.

3. Section 43 (1) applies as if for the number "10" there were substituted the number "20".

4. (1) For the purposes of sections 47 and 49,—

(a) Shares or options are issued for cash if the shares or options are issued by way of capitalisation of reserves, distributions, rebates otherwise payable to shareholders, or discounts allowed in relation to transactions by shareholders with a group company:

(b) The amount of cash is the amount debited to the relevant reserve, distribution, or relevant rebate account and credited in payment of the issue price of the shares.

(2) Sections 47 (6) and 49 (4) do not apply to the issue of such shares or options.

5. Section 53 applies as if for subsection (2) there were substituted the following subsection:

"(2) Except as provided in the constitution of the company or by the terms of the shares, the board must not authorise a dividend that discriminates among the shares in a class.

6. The Act applies as if for section 54 there were substituted the following section:

"54. **Shares in lieu of dividends**—The board may issue shares in lieu of dividends in accordance with the constitution of the company and the terms of the shares that confer an entitlement to payment of dividends."

7. ((1) Section 55 does not apply to amounts that are not distributions.)

(2) Section 55 (2) (b) does not apply.

*Struck Out (Unanimous)*

8. Section 95 does not apply to the company.

9. Section 149 does not apply to the acquisition or disposition of shares by a director in his or her capacity as a farmer customer (within the meaning of the constitution).

10. Section 175 does not apply to an act or omission authorised or required by this Act.

SCHEDULE 1—*continued*

APPLICATION TO HOLDING COMPANY OF COMPANIES ACT 1993—*continued*

*Struck Out (Unanimous)*

11. Sections 209 (1) and 210 (1) apply as if for the number “20” there were substituted the number “10”.

SCHEDULE 2

Section 13 (2)

PROVISIONS APPLYING TO REDEMPTION OF SHARES BY HOLDING COMPANY

1. The board of the company must be satisfied on reasonable grounds that the company will, immediately after the redemption, satisfy the solvency test.

2. The board of the company may, in accordance with the constitution of the company and any applicable terms of issue of the shares, authorise 1 or more redemptions of shares at such time, of such amount, and in respect of such shareholders as the directors think fit.

3. The amount payable to redeem a share must be an amount fixed in accordance with the terms of issue of the share and the constitution of the company.

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

5. The certificate may be incorporated in the resolution authorising the redemption and may be given by reference to such general categories of redemption, time, amount, price, or other conditions as the directors think fit.

6. If, after a redemption has been authorised and before it has been made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after it is made, satisfy the solvency test, the redemption is deemed not to have been authorised.

7. Section 52 (4) of the Companies Act 1993 (which defines the terms “debts” and “liabilities” for the purposes of the solvency test) applies to redemptions under this Schedule.

8. A redemption of shares under this Schedule is (*deemed to be*) a distribution for the purposes of section 56 of the Companies Act 1993 (which relates to the recovery of unauthorised distributions).

9. The consideration for the redemption of shares under this Schedule is an unsecured debt owed by the company to the shareholder payable in accordance with the terms of issue of the shares and the constitution of the company.

10. Shares redeemed under this Schedule are deemed to be cancelled immediately on redemption.

11. Shares are redeemed under this Schedule when the company would, apart from clause 10, become entitled to exercise the rights attaching to the shares.

SCHEDULE 2—*continued*PROVISIONS APPLYING TO REDEMPTION OF SHARES BY HOLDING COMPANY—  
*continued*

12. On the cancellation of a share under this Schedule, the rights and privileges attaching to the share expire but without affecting the enforceability of rights relating to the share and existing before the cancellation.

13. The following provisions of the Companies Act 1993 apply, subject to such modifications as may be necessary, to an alteration to the terms of a share, whether or not the terms are contained in the constitution of the company, that materially adversely affect the rights of the holder of the share in relation to redemption or the amount payable on redemption:

- (a) Section 106 (which requires certain powers to be exercised by special resolution);
- (b) Section 107 (which enables consent to be given to certain actions by a company);
- (c) Sections 110 to 115 (which relate to the right of a shareholder to require a company to purchase shares).

14. Clause 13 does not apply to an alteration to the terms of issue of a share if the alteration—

- (a) Is made in accordance with the terms of the share and the constitution of the company; and
- (b) Does not unfairly discriminate between shareholders having similar attributes that the board is authorised under the constitution of the company to take into account.

15. Section 117 of the Companies Act 1993 (which prohibits certain action being taken except with the approval of a special resolution of an interest group) does not apply to an alteration to the terms of issue of a share if the alteration—

- (a) Is made in accordance with the terms of the share and the constitution of the company; and
- (b) Does not unfairly discriminate between shareholders having similar attributes that the board is authorised under the constitution of the company to take into account.

16. Every director of the company who fails to comply with clause 4 commits an offence and is liable on summary conviction to a fine not exceeding \$5000.

17. Despite the Summary Proceedings Act 1957, an information for an offence against clause 16 may be laid at any time within 3 years after the date of the offence.