

**LAWS OF FIJI**

**CHAPTER 119**

**CO-OPERATIVE DAIRIES**

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*Act No. 15 of 1974, Legal Notice No. 85 of 1979*

**AN ACT TO ESTABLISH CO-OPERATIVE DAIRY COMPANIES**

[24 May 1974]

*Short title*

1. This Act may be cited as the Co-operative Dairy Companies Act.

*Interpretation*

2. In this Act, unless the context otherwise requires –

"co-operative dairy company" means a company which is incorporated under the Companies Act (whether before or after the commencement of this Act) and which includes amongst its articles of association all of the articles set out in the Schedule and which also has for its principal object the collection, treatment or manufacture and distribution of dairy produce supplied to the company:

*(Cap. 247.)*

Provided that for the purpose of this definition the "principal object" in relation to any company means the principal business which the company actually carries on

for the time being, notwithstanding that, by its memorandum of association or by any written law, the company may be authorised to carry on any other business;

"dairy produce" means milk, cream, or butterfat, and includes any product of milk or cream;

"milk" means the normal sweet secretion obtained from the udder of a cow and "cream" and "butterfat" must be constituents of milk;

"profit" means the point in time in her lactation at which a cow commences to produce milk of a marketable quality;

"Registrar" means the Registrar of Companies;

"supplying shareholder" means a shareholder of a co-operative dairy company who, at the date during the financial year of the company on which his status as a supplying shareholder for the purposes of this definition is to be determined –

(a) after making provision for his own domestic requirements (if any), is supplying to the company the whole or such portion as the company requires of the dairy produce obtained from cows owned by him or subject to his control; and

(b) has so supplied the company continuously from the time he commenced to supply during that financial year; and

(c) while so supplying has performed in relation to that supply all his obligations as a shareholder which the company has from time to time during that financial year lawfully required of him:

Provided that –

(i) a shareholder who at the date aforesaid has not commenced to supply to the company during that financial year by reason of the fact that his cows have not yet come into profit shall be deemed for the purposes of paragraphs (a) and (b) to be supplying continuously to the company the whole of his supply as aforesaid if in the opinion of the directors of the company he will commence and continue during the financial year so to supply as soon as his cows come into profit;

(ii) in the case of a company first incorporated after the commencement of this Act every shareholder shall be deemed for the purposes of this Act to be a supplying shareholder until such time as the company commences to receive dairy produce;

(iii) where a company registered under this Act has ceased to collect, treat or manufacture and distribute dairy produce supplied by its shareholders, all shareholders who were supplying shareholders

immediately before that cessation shall be deemed for the purposes of this Act to continue to be supplying shareholders until such time as the company recommences to collect, treat or manufacture and distribute dairy produce supplied by its shareholders.

*Registration of co-operative dairy company*

3.—(1) A co-operative dairy company may at any time, on application to the Registrar and on payment of a fee of \$10, or such other fee as the Minister may prescribe, become registered as such under this Act, and when so registered shall become subject to the provisions of this Act.

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

(3) Any registration of a company under this Act may at any time be cancelled by the Registrar if he is of opinion that the company is not or has ceased to be a co-operative dairy company within the meaning of this Act, and upon the cancellation being notified to the company, the company shall cease to be subject to the provisions of this Act.

*Restrictions on use of the word "co-operative" as part of a name or title*

4.—(1) No company which has for its object or one of its objects the collection, treatment or manufacture, and distribution of dairy produce shall be registered under the Companies Act under any name which includes the word "co-operative" or any word of like significance, unless it is entitled to be registered as a co-operative dairy company under this Act.

*(Cap. 247.)*

(2) Notwithstanding the provisions of sub-paragraph (iii) of paragraph (b) of the proviso to subsection (2) of section 21 of the Companies Act and the provisions of section 60 of the Co-operative Societies Act, a company which is entitled to be registered as a co-operative dairy company under this Act shall be entitled to include the word "co-operative" in its name or title.

*(Cap. 247, Cap. 250.)*

(3) If at any time after it is so registered under the Companies Act, a co-operative dairy company ceases to be entitled to be registered under this Act or its registration under this Act is cancelled, the Registrar may by notice call upon it to take steps to change its name so as to remove the significance that it is a co-operative company, including the use of the word "co-operative" as part of its name or title, and the company shall, no later than one month from the date of such notice from the Registrar, take the appropriate steps under the Companies Act appropriately to change its name. *(Cap. 247.)*

(4) If any company fails to comply with the provisions of subsection (3), the chairman and every director of the company shall be severally liable on conviction to a fine not exceeding \$10 for every day during which the default continues.

*Only supplying shareholders entitled to vote*

5. No shareholder of a company which is registered under this Act who is not for the time being a supplying shareholder of the company shall be entitled to vote at any meeting of the company or on any ballot conducted by the company.

*Surrender and reissue of shares, payment for surrendered shares and forfeiture of shares*

6.–(1) Any shareholder of a company which is registered under this Act who has not supplied any dairy produce to the company during the immediately preceding period of 3 years may surrender to the company any shares held by him in the company, and, subject to the provisions of subsection (6), the company shall accept that surrender.

(2) In any case not provided for in subsection (1) a company registered under this Act may in its discretion, subject to the provisions of subsection (6), accept from any shareholder a surrender to the company of his shares.

(3) Any company registered under this Act may at any time by resolution of the directors, but subject to the provisions of subsection (6), require any shareholder, who for the time being holds and has for the whole of the immediately preceding period of 3 years held shares in the company in excess of the number which, having regard to his supply from time to time of dairy produce to the company, he is required to hold under the provisions of the articles of association of the company, to surrender to the company all or any of the shares so held by him in excess of the number he is so required to hold.

(4) There shall be payable to every shareholder whose shares are surrendered under any of the provisions of this section out of the assets of the company by way of consideration for that surrender such amount, not exceeding the amount paid up or deemed to be paid up on the shares surrendered, as shall be agreed upon by the company and the shareholder, or, in default of such agreement, as shall be fixed by the Auditor of the company.

(5) Any shares surrendered under the foregoing provisions of this section may be reissued by the company to any person in the same manner as if they had not been previously issued.

(6) Except with the authority of the Registrar, the number of shares surrendered to a company and not reissued shall not at any time exceed one-fifth of the total number of shares issued by the company, exclusive of the shares so surrendered and not reissued:

Provided that any person aggrieved by a decision of the Registrar made under or in exercise of the powers vested in him by this sub-section may within one month of the day on which he receives notification of such decision, appeal against such decision to a resident magistrate<sup>1</sup> and, upon such appeal, the magistrate may confirm, reverse or vary the decision of the Registrar.

(7) Any director of a company who accepts, authorises, or consents to the surrender of any share in breach of the provisions of subsection (6) commits an offence, and shall be liable on conviction to a fine not exceeding \$50 in respect of each share so unlawfully surrendered.

(8) In any case where the registered owner for the time being of shares in a company registered under this Act has for a period of more than 5 years (whether before or after the date of the registration of the company under this Act) not been at his last address known to the company or whose address has not been known to the company for more than such period of 5 years, the company may upon publishing a notice in 3 separate issues of a newspaper published and circulating in Fiji forfeit the shares without making any payment therefore at the expiry of 3 months from the date of the last publication of the notice, unless within that time a proper claim to the shares has been lodged with the company.

*Value of surrendered shares to be unsecured debt*

7. Where any shares are surrendered to a company under this Act, the value thereof, determined in accordance with the provisions of this Act, shall be deemed to be an unsecured debt payable immediately by the company to the shareholder and may be recovered accordingly in a court of competent jurisdiction.

*Modification of memorandum of association of companies*

8. Notwithstanding the provisions of any other written law, the memorandum of association of a company registered under this Act shall be deemed to have been modified so as to be read subject to the provisions of the articles set out in the Schedule.

*Provisions of this Act to override provisions of other written laws, etc.*

9.—(1) Except where this Act expressly provides to the contrary, the provisions of this Act shall take effect notwithstanding anything contained in any written law (including the Companies Act) or in the memorandum or articles of association of any company.

*(Cap. 247.)*

(2) So long as a company is registered under this Act, none of its shares need have a distinguishing number.

(3) Notwithstanding that a company has been incorporated as a private company, so long as it is registered under this Act any restriction on the number of its shareholders to enable it to remain a private company shall not apply.

*Regulations*

10.—(1) The Minister may make regulations for the better carrying into effect of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may lay down areas from within which each individual co-operative dairy company shall in normal circumstances reasonably accept supplies of dairy produce offered to it.

*Appointment of additional directors by Minister*

**11.**—(1) In addition to the number of directors to be appointed under the articles of association of a co-operative dairy company the Minister may, from time to time, appoint not more than 3 directors who need not be supplying shareholders.

(2) Additional directors appointed by the Minister under subsection (1) shall hold office for such term as the Minister shall specify in their appointments, being a term not exceeding 3 years, but may from time to time be re-appointed.

(3) Every additional director appointed by the Minister under this section, unless he vacates or is removed from his office, shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(4) An additional director appointed under this section may, notwithstanding the provisions of any articles of association of the company or of any written law to the contrary, be appointed as managing director or as chairman of directors of the company by the directors of the company or as is otherwise provided for in the articles of association.

(5) The provisions of the articles of association relating to the removal from office, rotation, retirement, replacement of directors and generally relating to the status as opposed to the functions of directors shall not, unless otherwise directed by the Minister in any particular case, apply to additional directors appointed by the Minister under this section.

## **SCHEDULE**

*(Section 2)*

*(Amended by Legal Notice 85 of 1979.)*

### **ARTICLES WHICH MUST BE ADOPTED BY A COMPANY AND BE INCLUDED IN AND AMONGST ITS ARTICLES OF ASSOCIATION BEFORE IT CAN BE REGISTERED AS A CO-OPERATIVE DAIRY COMPANY UNDER THIS ACT**

(NOTE—The numbering below of the Articles is for the purpose of this Schedule only and need not be followed by companies in adopting these articles, nor is it necessary that the articles be adopted and written into the articles of companies in the order listed below, nor need the headings below be followed or be used. The articles themselves must be adopted in full, subject to minor modifications only which are accepted by the Registrar as being necessary in any particular case, but need not follow the exact form below, i.e. in its use of sentences, paragraphs, etc. The articles can also be interposed between other of the company's articles and parts of its other articles).

#### *Interpretation*

**1.** Expressions defined in the Co-operative Dairy Companies Act shall have the meanings so defined.

#### *Directors*

**2.** No person shall be qualified to act as a director (other than as a director appointed under section **11** of the Co-operative Dairy Companies Act) unless he is a supplying shareholder

of the Company holding not less than one share in the capital of the Company, or unless he is a member of a company or of a partnership which is a supplying shareholder of the Company and which holds not less than one share in the capital of the Company, and, in the case of such a company, unless he is qualified to be a director of that company. Only one member of a company or partnership holding shares in the capital of the Company shall be qualified to act as a director of the Company under the provisions of this article.

#### *Disqualification of Directors*

**3.** The office of a director shall be vacated if he, not being a director appointed under section 11 of the Co-operative Dairy Companies Act, ceases to be a supplying shareholder holding at least one share in the capital of the Company, or if, in any case where he holds office as a director of the Company by virtue of being a member of a company or partnership which is a supplying shareholder of the Company, he ceases to be a member or to be qualified to be a director of that company, or to be a member of that partnership, as the case may be, or if that company or partnership ceases to be a supplying shareholder holding at least one share in the capital of the Company.

#### *Terms of Supply*

**4.** All dairy produce supplied to the Company by any person shall, except as may otherwise be agreed upon in writing, be deemed to be supplied upon the terms set out in these Articles.

#### *Shareholding by Suppliers*

**5.** Subject to the provisions of article 4 hereof, the supply by any person of dairy produce to the Company shall in itself be deemed to be an irrevocable application by that person to become a member of and to accept such shares in the Company as he shall be required to hold in accordance with these Articles, and it shall be lawful for the directors, without any other application therefor, to allot immediately such number of shares as they think will be required by him on their estimate of the probable quantity of his supply of dairy produce, or the directors may in their discretion defer the allotment of those shares until the quantity so supplied for the particular financial year is ascertained; and those persons shall be entitled to the allotment accordingly:

Provided that no person shall be so entitled to the allotment of shares should his supply or estimated supply of dairy produce be less than the equivalent of 360 kilograms of butterfat in the financial year in question or should he, in the opinion of the directors, be unlikely to become a regular supplying shareholder of the Company.

**6.** Each person supplying dairy produce shall, in respect of the financial year of the Company in which he is so supplying, be required to hold such number of shares as may from time to time be fixed by the directors, but being not more than one share for every kilogram of butterfat obtained or obtainable from the dairy produce or, alternatively, for every litres or kilograms of milk supplied by him or which in the estimation of the directors he will supply during that financial year.

**7.** If on the last day of any financial year of the Company it appears by the books of the Company that any member has held a smaller number of shares in the Company than is required to be held by him in terms of article 6 hereof, it shall be lawful for the directors immediately to allot to him without any application therefor by or on behalf of that member, such further number of shares as shall be required to be held by him in terms of these Articles.

**8.** In lieu of allotting the full number or estimated number of shares required to be held by any member under articles 5, 6 and 7 hereof, the directors may at any time and from time to time, until the member has been allotted the total number of shares which he is required to hold under those articles, apply any amounts payable to that member under article 12 (1) hereof in the payment in full of such number of fully paid shares as can be paid up in full out of those amounts, and may apply any remaining part of the said amounts in part payment of another share in the Company; and the directors shall allot the said fully paid shares and any such partly paid share to the member accordingly.

#### *Payments and Returns*

**9.** All dairy produce supplied to the Company shall be handled, manufactured, or rendered marketable by the Company, and shall be disposed of by the Company in such manner and on such terms and in such places or markets, whether within or outside Fiji, as the directors shall in their uncontrolled discretion consider advisable or as may be required by law.

**10.—(1)** The net annual returns arising from or in relation to such dairy produce shall, as at the last day of each financial year, be arrived at by adding to the gross returns all penalties or charges of the kind specified in article 18 hereof and deducting from that sum the whole or so much thereof as the directors consider equitable of the following:-

(a) the costs, charges, and expenses incurred in or about the carrying out of any of the objects, powers, or authorities of the Company;

(b) all premiums and allowances of the character specified in articles 16 and 18 hereof;

(c) depreciation of any of the Company's assets;

(d) such sums as the directors may consider necessary or desirable to set aside as a reserve fund or for meeting contingencies of any description or for stabilising or making more uniform monthly progress, or final or other payments to persons supplying dairy produce to the Company or for any capital expenditure incurred or to be incurred in that or in any other year or for such other purposes as the directors in their absolute discretion think fit:

Provided that nothing contained in this paragraph shall authorise the payment of any dividend on shares out of returns arising from or in relation to dairy produce produced in Fiji for supply to the Company.

(2) The directors may from time to time use all or any part of the moneys so deducted for all or any of the purposes referred to in paragraph (1).



**11.—**(1) The directors may at any time in respect of the dairy produce received by the Company during the immediately preceding month make to each person supplying that dairy produce such payments as they deem advisable, having regard to their estimate of the net returns for that dairy produce after making such deductions as they consider ought to be made under article 10 hereof.

(2) Payments under paragraph (1) shall be due and payable on the 20th day of the month following the month in which the dairy produce was supplied or on such other monthly date as the directors from time to time determine.

(3) The directors may if they think fit from time to time in any financial year make further progress payments in respect of dairy produce supplied to the Company during any previous month or months in that financial year.

#### *Distribution of Net Returns*

**12.—**(1) If the net returns for dairy produce for any financial year after making such deductions as the directors think fit under article 10 hereof exceed the total amount paid out by the Company under article 11 hereof, the directors shall in the fifth month of the next succeeding financial year, or in such other month in that year as they from time to time determine, make a final payment (whether by instalments or otherwise) to each supplying shareholder of his due share of those returns in proportion to the dairy produce supplied by him on such basis as the directors from time to time determine –

(a) by making a payment at a rate fixed by the directors from time to time on the quantity of dairy produce supplied by the shareholder in respect of which he holds shares in the Company in accordance with the provisions of these Articles:

Provided that the directors may if they think fit make a similar payment in relation to each portion of the dairy produce supplied by any such shareholder in respect of which he does not hold shares in accordance with the provisions of these Articles so long as the payment is applied by the directors on behalf of the shareholder so far as may be necessary to meet the cost of additional fully paid shares which the shareholder is required to hold under these Articles;

(b) by making payment of the balance (whether by instalments or otherwise) at the times hereinbefore fixed to the shareholder in proportion to the quantity of dairy produce supplied by him on such basis as the directors from time to time determine.

(2) If the net returns for dairy produce for any financial year after making such deductions as the directors think fit under article 10 hereof are less than the total amount paid out by the Company as payments under article 11 hereof the directors may require each supplying shareholder to refund his proportion based on the payments received by him of the total amount so paid in excess of the net returns for that year; and upon demand therefor being made by notice in writing to the shareholder the amount which he is so required to refund to the Company shall constitute a debt owing by him to the Company and shall be recoverable accordingly in any court of competent jurisdiction or may be retained by the

Company out of any future payments for dairy produce due by the Company to that shareholder:

Provided that in any such case any amount retained out of future payments under the provisions of this paragraph shall not at any one time be such as to diminish each such future payment by more than 10 per cent.

(3) Upon all payments having been made in accordance with paragraph (1) the Company shall thereupon be deemed to have fully accounted to each supplying shareholder for his full share of the net returns of the dairy produce supplied by him to the Company in the financial year concerned but should the Company later receive further returns or realisations in respect of that dairy produce the directors may if they think fit make a further distribution in accordance with the provisions of paragraph (1), or they may retain those further returns or realisations as part of the returns of the Company in the financial year in which they are received.

#### *Supply from Non-members*

**13.** The directors may if they think fit so to do purchase dairy produce at a price determined in accordance with article 14 hereof from any person who is not a supplying shareholder of the Company without requiring him to take up shares in the Company.

**14.—(1)** All dairy produce supplied by a person who is not a supplying shareholder of the Company shall, in the absence, of any agreement in writing as to price between the Company and that person, be deemed to be purchased by the Company at a price corresponding to that which is paid by the Company to its supplying shareholders as payment under article 11 hereof for dairy produce supplied to the end of the month immediately preceding the date of purchase. That person shall not by virtue solely of the fact of his so supplying dairy produce to the Company be entitled in any way to claim or to participate in any rebates, allowances, or other payments (whether final or otherwise) which in accordance with these Articles the Company may subsequently make to its supplying shareholders.

(2) Nothing contained in paragraph (1) shall in any way limit the powers of the directors under these Articles to treat as a supplying shareholder of the company for the purpose of making payments for dairy produce purchased from him any person who, though not a supplying shareholder of the Company, has in the opinion of the directors substantially complied with the meaning of the term "supplying shareholder" as defined in the Co-operative Dairy Companies Act.

(3) If any payment is made to a person who is not a supplying shareholder of the Company in respect of dairy produce supplied by him which, if he were a supplying shareholder, would be repayable by him under article 12(2) hereof, the directors may require him to refund the amount so paid in excess. Any amount so paid in excess shall, on being demanded by the directors by notice in writing (which may be given to him in the same way as if he were a shareholder of the Company), constitute a debt owing by that person to the Company and shall be recoverable accordingly in any court of competent jurisdiction, or may be retained by the Company out of any future payments which may become due to him by the Company in respect of dairy produce supplied by him to the Company.

### *Other Income*

**15.** All other income of the Company or any part thereof (other than income arising from or in relation to the supply or sale of dairy produce produced in Fiji) may, at the discretion of the directors, be transferred and added to the net annual returns set out in article 10(1) hereof, or, if so recommended by the directors, the Company in general meeting may distribute the same amongst all members in proportion to the capital paid up on the shares held by them respectively. Should such other income of the Company or any part thereof be so divided amongst all members in proportion to the capital paid up on the shares held by them respectively, no interest shall be payable thereon by the Company if any such dividend should remain unclaimed for any period. If any such dividend should remain unclaimed for a period of 5 years after the declaration thereof, the directors may forfeit the same for the benefit of the Company.

### *Premiums in respect of Dairy Produce*

**16.** The directors may fix and pay from time to time such premiums or allowances to individual members or persons or sections or groups of members or persons in respect of the supply of dairy produce of any particular type or in any particular form or during any particular period or at any particular factory, place, or times as they from time to time consider to be necessary.

### *Grading of Dairy Produce*

**17.** The directors may from time to time in their sole discretion, grade or class, and re-grade or re-class, all dairy produce supplied to the Company, and they may in such manner as they think fit, subject to the provisions of any other written law, fix the various grades or classes into which the said produce so supplied shall be placed. In fixing those grades and classes the directors may take into consideration the quality and effect of that produce upon the articles manufactured by the Company, and may also have regard to such other matters as they think fit in the best interest of the Company.

**18.** The directors may grant and pay from time to time premiums or allowances for various quality grades or classes of dairy produce and may fix and deduct various penalties for grades or classes of dairy produce not of the finest grade or quality and for these purposes the directors may employ the grading and classification fixed under article 17 hereof.

### *Controlled by Ministry of Primary Industries*

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<sup>1</sup> See Legal Notice No. 44 of 1977.