

**Dairy Board Acts (1961 to 1997) by Parliamentary Counsel 010**

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REPRINTED ACT  
[WITH AMENDMENTS INCORPORATED]

DAIRY BOARD

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NOTE: Except where otherwise indicated, all references to money in decimal currency in square brackets were substituted for references to money in the former currency by s. 7 of the Decimal Currency Act 1964.

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## THE DAIRY BOARD ACT 1961

1961, No. 5

An act to consolidate and amend the law relating to the acquisition and marketing of dairy produce, to establish [the New Zealand Dairy Board], and to define its functions and powers

[30 August 1961

The name of the New Zealand Dairy Board was changed from the New Zealand Dairy Production and Marketing Board by s. 10 (3) of the Dairy Board Amendment Act 1965; see s. 10 (7) of that Act.

1. Short Title and commencement---(1) This Act may be cited as [the Dairy Board Act 1961].

(2) This Act shall come into force on the 1st day of September 1961.

In subs. (1) the Short Title of this Act, as printed in square brackets, was substituted for the title "the Dairy Production and Marketing Board Act 1961" by s. 10 (1) of Dairy Board Amendment Act 1965.

[2. Interpretation---(1) In this Act, 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;---

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:

"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:

- ``Commencement date" means the date appointed under section 1 (3) of the Dairy Board Amendment Act (No. 2) 1996 for the coming into force of sections 2, 3, 6, 7, 9, 10, 11, 13, 19, and 20 of, and the Second Schedule to, that Act:
- ``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 or section 3AH (a) of this Act; and includes the constitution so adopted 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; and
  - (c) A co-operative dairy company registered under Part III of the Co-operative Companies Act 1996:
- ``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:
- ``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
  - (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 acquired by the manufacturer during the 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

(c) From milk stations (within the meaning of section 2 of the Dairy Industry Act 1952);---  
but does not include---

(d) Milksolids contained in dairy produce sold or transferred by the manufacturer to any person and subsequently reacquired by the manufacturer in any form; and

(e) 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 as milk or cream:

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

“Qualifying company holding shares” means a qualifying company that holds shares that have been issued under any of sections 15A to 15D 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---

(a) Owned by the qualifying company or by any wholly-owned subsidiary of the qualifying company, not being a subsidiary that is a 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:

“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 or by any wholly-owned subsidiary of the qualifying company, not being a subsidiary that is a qualifying company:

“Qualifying milksolids”, in relation to a qualifying company, means the kilograms of milksolids that, in the immediately preceding season, were paid for by the Board in respect of any qualifying export produce and contained in any 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:

“Share” means a share in the Board issued pursuant to Part IA of this Act:

“Supplying shareholder”,---

(a) In relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949, has the same meaning as in section 2 (1) of that Act:

(b) In relation to a co-operative dairy company registered

under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act, has the same meaning as in section 34 of that Act:

``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 as milk or cream:

``Voting milksolids''---

(a) In relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act, means own-supply milksolids; and

(b) In relation to a co-operative milk marketing company registered under the Co-operative Companies Act 1956 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (b) and (c) of that Act, means milksolids---

(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 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act; 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 as milk or cream) by the manufacturer.

(2) For the purposes of the definitions of the terms ``qualifying dairy produce'', ``qualifying export produce'', and ``town milk'' in subsection (1) of this section, the references in the definitions of the terms ``dairy produce'' and ``export produce'' to ``milk'' and ``cream'' shall be construed as references to cows' milk or cream.]

This section was substituted for the original s. 2 (as variously amended) by s. 2 (1) of the Dairy Board Amendment Act (No. 2) 1996.

[2A. Meaning of ``qualifying company''---(1) For the purposes of this Act, but subject to subsections (2) to (5) of this section, ``qualifying company'' means a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in paragraphs (a) and (b) of section 35 (1) of that Act, as the case may be, in which---

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

(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

(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

(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---

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

exceeds 15 percent of the shares on issue by the company as at the 30th day of June in any year.

(3) Where a company ceases to be a qualifying company, the Board may, on application by the company, treat the company as a qualifying company for a further period of 6 months and, in any such case, the company shall, during that period, be deemed to be a qualifying company for the purposes of this Act and the constitution.

(4) A company that is a qualifying company on the commencement date is deemed, for the purposes of this Act, to have been a qualifying company during every season preceding the commencement date.

(5) For the purposes of subsection (1) (b) of this section, a reference to the term "milksolids" includes a reference to "milkfat" or "protein".

[2B. Meaning of "solvency test"---(1) 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
- (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:
- (b) May rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

(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.

[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.

[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--

- (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 (including, as the case requires, successors 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
- (b) In writing, the approval to the taking of the action of those qualifying companies (including, as the case requires, successors 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).]

Ss. 2A to 2D were substituted from 12 December 1996 for the former s. 2A (as inserted by s. 4 of the Dairy Board Amendment Act 1998) by ss. 1 (3) and 3 (1) of the Dairy Board Amendment Act (No. 2) 1996.

## PART I

### New Zealand Dairy Board

3. New Zealand Dairy Board established---(1) There is hereby established a Board, to be called the New Zealand Dairy . . . Board.

(2) Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

(2A) Substituted by s. 2 (1) of the Dairy Board Amendment Act 1988, and repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

(3) Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

[(4) The Board is a body corporate, with perpetual succession and a common seal.]

Cf. 1953, No. 41, s. 3

In subs. (1) the words "Production and Marketing" were omitted by s. 10 (6) (b) of the Dairy Board Amendment Act 1965.

Subs. (4) was substituted for the original subs. (4) by s. 5 (2) of the Dairy Board Amendment Act 1988.

[3AA. Constitution of Board---[[The Board shall have a board of directors comprising]]---

- (a) Two directors (being people who, in the Board's opinion, are qualified by commercial expertise to be directors) appointed by the Minister on the Board's recommendation; and
- (b) Eleven directors, each of whom has been either---
  - (i) Appointed by a co-operative company; or
  - (ii) Elected by a group of co-operative companies.]

This section was inserted from 22 March 1993 by ss. 1 (2) and 2 (1) of the Dairy Board Amendment Act 1992. See S.R. 1993/17.

The words in double square brackets were substituted for the former words by s. 4 of the Dairy Board Amendment Act (No. 2) 1996.

[3AB. Meaning of "board of directors"---In this Act, unless the context otherwise requires, "board of directors" means the directors of the Board constituting a quorum under section 12 (4) of this Act.

[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.

(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.]

[[3ACA. Major transactions---(1) The Board must not enter into a major transaction unless the transaction---

- (a) Has the approval of qualifying companies holding shares; or
- (b) Is contingent on the approval of qualifying companies holding shares.

(2) In this section,---

"Assets" includes property of any kind, whether tangible or intangible; but does not include export produce:

“Major transaction”, in relation to the Board, means---

- (a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the Board's assets before the acquisition; or
- (b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the Board the value of which is more than half the value of the Board's assets before the disposition; or
- (c) A transaction that has or is likely to have the effect of the Board acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Board's assets before the transaction.

(3) Nothing in paragraph (c) of the definition of the term “major transaction” in subsection (2) of this section applies by reason only of the Board giving, or entering into an agreement to give, a floating charge secured over assets of the Board the value of which is more than half the value of the Board's assets for the purpose of securing the repayment of money or the performance of an obligation.

(4) Nothing in this section applies to a major transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Board.

(5) Nothing in this section applies to a transaction or part of a transaction relating to the acquisition or disposition of export produce by the Board.]]

This section was inserted from 12 December 1996 by ss. 1 (3) and 6 of the Dairy Board Amendment Act (No. 2) 1996.

[3AD. Duties of directors---The provisions contained in the Fourth Schedule to this Act apply to the directors of the Board.]

Ss. 3AB to 3AD were inserted by s. 5 of the Dairy Board Amendment Act (No. 2) 1996.

[3AE. Board to have written constitution---The Board must have a written constitution and must adopt, as its initial constitution, the constitution approved in accordance with section 1 (4) of the Dairy Board Amendment Act (No. 2) 1996.

[3AF. Contents of constitution---The constitution---

- (a) Must contain the matters required by this Act to be contained in it;
- (b) May contain matters relating to the issue and holding of shares, dividends payable in respect of shares, and other matters contemplated by this Act relating to shares.

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

- (2) Subject to this Act, the constitution is binding as between---
- (a) The Board and each qualifying company holding shares; and
  - (b) Each qualifying company holding shares---

in accordance with its terms.

[3AH. Alteration to constitution---(1) Subject to subsection (2) of this section, qualifying companies holding shares may, from time to time, by resolution,---

- (a) Revoke the constitution and adopt a new one:
- (b) Amend the constitution.

(2) A resolution to revoke the constitution and adopt a new one or amend the constitution, as the case may be,---

- (a) May be proposed by the Board or by a qualifying company holding shares:
- (b) Is not effective unless it is approved in the manner specified in section 2D of this Act and, in the case of a resolution proposed by a qualifying company holding shares, it is approved by the Board.]

Ss. 3AE to 3AH were inserted from 12 December 1998 by ss. 1 (3) and 7 of the Dairy Board Amendment Act (No. 2) 1996.

[3A. Board to have powers of natural person---(1) Except as provided in this Act, the Board has---

- (a) The rights, powers, and privileges of a natural person; and
- (b) The power to issue debentures; and
- (c) The power to grant floating charges on the Board's undertaking or property, or any of it; and
- (d) The power to do any other thing it is authorised to do by---
  - (i) This Act; or
  - (ii) Any other enactment; or
  - (iii) Any rule of law.

(2) Paragraphs (b) to (d) of subsection (1) of this section do not affect the generality of paragraph (a) of the subsection.

[[3) The Board shall not exercise any of its rights, powers, or privileges, except for the purpose of---

- (a) Performing its functions; or
- (b) Entering into any financial transaction or financial obligation intended to---
  - (i) Avoid or lessen any present or possible future risk to the Board's current or future income or assets; or
  - (ii) Lessen any liability of the Board; or
  - (iii) Avoid or lessen any possible future liability of the Board; or
  - (iv) Maximise the Board's current or future income (whether net or gross).]] ]

This section was inserted by s. 5 (1) of the Dairy Board Amendment Act 1988.

Subs. (3) was substituted for the former subs. (3) by s. 3 (1) of the Dairy Board Amendment Act 1992.

[3B. Application of Part II of Commerce Act 1986 to Board---(1) It is hereby declared that nothing in Part II of the Commerce Act 1986 applies in respect of any act, matter, or thing done by any person (whether the Board, any person acting on the Board's behalf, or any other person) under any of the provisions of this Act specified in subsection (2) of this section.

(2) The provisions referred to are sections 17 (1) (h), 17 (1A), 18, 25A, 26, 26A, 26C, 26D, 28, and 28A.

(3) In determining, for the purposes of section 43 (1) of the Commerce Act 1986, whether any act, matter, or thing done at any time by any person (whether the Board, any person acting on the Board's behalf, or any other person) under---

- (a) Any provision of this Act not specified in subsection (2) of this section; or
- (b) Any enactment other than this Act; or
- (c) Any Order in Council made under any enactment other than this Act,---

is or was specifically authorised by any enactment or Order in Council made under any Act, no regard shall be had to subsection (1) of this section.

(4) Notwithstanding that some of the provisions of this Act specified in subsection (2) of this section were enacted or amended after the commencement of the Commerce Act 1986, subsections (1) to (3) of this section shall have effect as if they had come into force on that commencement.]

This section was inserted by s. 4 of the Dairy Board Amendment Act 1992.

[3C. Board may authorise appointment and election of directors---(1) Subject to subsections (2) to (5) of this section, the Board may from time to time, by notice in the Gazette,---

- (a) Do either or both of the following:
  - (i) Authorise a co-operative company (or each of 2 or more co-operative companies) to appoint a specified number of directors:
  - (ii) Authorise a group of co-operative companies (or each of 2 or more groups of co-operative companies) to elect a specified number of directors; and
- (b) Except in the case of the first notice under this subsection, specify,---
  - (i) In relation to directors whose appointment or election is authorised, by reference to the co-operative company or group of co-operative companies by which each is to be appointed or elected; and
  - (ii) In relation to current directors, by reference to each director concerned,---

which of the former are to be regarded for the purposes of section 3D (2) of this Act as the successors to which of the latter; and

- (c) Specify, by reference to the co-operative company or group of co-operative companies by which each is to be appointed or elected, the term for which each of the first directors appointed or elected after the publication of the notice is to serve (being a term of 1, 2, 3, or 4 years).

(2) The Board may---

- (a) Authorise different companies to appoint different numbers of directors;
- (b) Authorise different groups of companies to elect different numbers of directors.

(3) The Board shall not exercise its powers under subsection (1) of this section without---

- (a) The approval of the dairy industry; and
- (b) The written consent of the Minister.

(4) The Board shall exercise its powers under subsection (1) of this section so that---

- (a) The total number of directors authorised to be appointed or elected is 11; and
- (b) No group of co-operative companies is authorised to elect more than 5 directors; and
- (c) No co-operative company is involved in the tenure of a total of more than 5 directors.

(5) For the purposes of this section and section 3E of this Act, a co-operative company is involved in the tenure of a number of directors if it---

- (a) Is authorised to appoint that number of directors; or
- (b) Is a member of a group of co-operative companies authorised to elect that number of directors; or
- (c) Holds shares representing more than 10 percent of the issued share capital of a co-operative company that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, that number of directors; or
- (d) Is effectively under the same control as a co-operative company that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, that number of directors.

(6) Every notice under subsection (1) of this section has the effect of revoking any previous notice under that subsection; but, except as provided in section 3D (2) of this Act, the revocation does not affect the tenure of any director.

[3D. Effect of new notice---(1) The first directors appointed or elected after the publication of a notice under section 3C (1) of this Act shall take office on appointment or election.

(2) Every director holding office under section 3AA (b) of this Act on

the day a notice under section 3C (1) of this Act is published shall go out of office on the earlier of---

- (a) The day 6 months after that day;
- (b) The day on which the director's successor is appointed or elected.

(3) Where a notice under section 3C (1) of this Act authorises a co-operative company to appoint 2 or more directors for terms of different lengths, it shall, on first appointing directors after the publication of the notice, indicate the length of the term for which each is appointed; and, subject to sections 3F (a) and 7 (2) of this Act, each shall serve,---

- (a) Where section 4 (1) of this Act requires a term shorter than the term indicated, for that shorter term;
- (b) Subject to paragraph (a) of this subsection, for the term indicated.

(4) Where a notice under section 3C (1) of this Act authorises a group of co-operative companies to elect 2 or more directors for terms of different lengths, the length of the term for which each of the directors first elected by the group after the publication of the notice is elected shall be determined by reference to the manner of election for the time being approved under section 3G of this Act; and, subject to sections 3F (a) and 7 (2) of this Act, each shall serve,---

- (a) Where section 4 (1) of this Act requires a term shorter than the term determined, for that shorter term;
- (b) Subject to paragraph (a) of this subsection, for the term determined.

[3E. Co-operative companies to cease to be members of electing groups in certain cases---Where---

- (a) One of the following events occurs:
  - (i) A co-operative company acquires shares representing more than 10 percent of the issued share capital of another co-operative company (in which it previously had no shares) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; or
  - (ii) A co-operative company gains effective control of another co-operative company (of which it previously did not have effective control) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; or
  - (iii) A person with effective control of one or more co-operative companies gains effective control of another (of which it previously did not have effective control) that is authorised to appoint, or is a member of a group of co-operative companies authorised to elect, one or more directors; and
- (b) But for this section, a co-operative company would thereby become involved in the tenure of more than 5 directors,---

the co-operative company in which shares have been acquired (or, as the case may be, of which effective control has been gained) shall immediately be deemed to have ceased (as the case may be) to be

authorised to appoint a director or directors, or to be a member of that group.

[3F. Directors to go out of office if company ceases to be member of electing group---Where on any day a co-operative company is deemed by section 3E of this Act to have ceased to be a member of a group of co-operative companies authorised to elect one or more directors, the following provisions shall apply:

- (a) Subject to paragraph (b) of this section, section 7 of this Act shall have effect as if every current director elected by the group (hereinafter in this section referred to as a vacating director) had resigned on that day:
- (b) Subject to section 7 (2) of this Act, every vacating director shall continue in office until the occurrence of the earlier of the following events:
  - (i) The election of any director to replace a vacating director:
  - (ii) The expiration of 6 months after that day;--- and then vacate office (having nevertheless been eligible for re-election):
- (c) Every director elected to replace a vacating director shall take office on election:
- (d) A re-elected vacating director shall hold office for the residue of the term for which the director was originally elected:
- (e) Subject to paragraph (d) of this section, where---
  - (i) Two or more directors have been elected for the residue of terms of 2 or more vacating directors; and
  - (ii) Those residues are of different lengths,--- the length of the residue for which each of the directors is elected shall be determined by reference to the manner of election for the time being approved under section 3G of this Act.

[3G. Manner of election---(1) Subject to subsection (2) of this section, the Board shall from time to time approve a manner of election of directors by groups of co-operative companies.

(2) The manner shall include the manner by which it is to be determined which of 2 or more directors elected for terms (or the residues of terms) of different lengths is to serve for which term (or residue).

- (3) The Board shall not approve a manner of election without---
- (a) The approval of the dairy industry; and
  - (b) The written consent of the Minister.

(4) Where a manner of election is approved under this section, the approval of the manner previously approved shall be deemed to have been revoked.

(5) Every election of directors shall be held in the manner for the time being approved under this section.]

Ss. 3C to 3G were inserted by s. 5 of the Dairy Board Amendment Act 1992.

[4. Terms of office of directors---(1) Except as otherwise provided by this Act, a director shall be appointed or elected,---

- (a) In the case of a person who before his appointment or election has attained the age of 68 years, for a term expiring with the 30th day of June in the year following the year of his appointment or election:
- (b) In the case of a person who before his appointment or election has attained the age of 64 years but has not attained the age of 68 years, for a term expiring with the 30th day of June next following the 68th anniversary of his birth:
- (c) In any other case, for a term expiring with the 30th day of June in the fourth year following the year of his appointment or election.

[[ (1A) Where, on or after the commencement of section 6 (1) of the Dairy Board Amendment Act 1992, there is appointed or elected a successor of a director who, by virtue of paragraph (a) or paragraph (b) of subsection (1) of this section, went out of office before the 30th day of June in the fourth year following the director's appointment or election, the successor shall be appointed or elected for a term expiring with that day.]]

(2) Notwithstanding [[subsections (1) and (1A)]] of this section, every director, unless he sooner vacates his office under section 7 of this Act, shall continue in office until his successor comes into office.]

Cf. 1953, No. 41, s. 4

This section was substituted for the original s. 4 (as amended by s. 2 of the Dairy Board Amendment Act 1965) by s. 4 (1) of the Dairy Board Amendment Act 1980.

Subs. (1A) was inserted by s. 6 (1) of the Dairy Board Amendment Act 1992.

In subs. (2) the expression in double square brackets was substituted for the expression "subsection (1)" by s. 6 (2) of the Dairy Board Amendment Act 1992.

5. Chairman and Deputy Chairman of Board---(1) The Chairman of the Board shall be elected by the Board from among [the directors in the month of June in each] year.

(2) At any time [the Board may from among the directors,] elect not more than 2 Deputy Chairmen, and any Deputy Chairman so elected shall hold office for a term of one year from the date of his election, but may from time to time be re-elected.

Cf. 1953, No. 41, s. 5

In subss. (1) and (2) the words in square brackets were substituted for the original words by s. 3 (3) of the Dairy Board Amendment Act 1980.

6. Deputies of members---[(1) If satisfied that any director is incapacitated by illness, absence, or other sufficient cause, from acting as a director, the Minister may appoint a deputy to act for the director during the incapacity,---

- (a) In the case of a deputy acting for a director appointed by the Minister, on the Board's recommendation; and
- (b) In the case of a deputy acting for a director appointed by a co-operative company, on the recommendation of the company (or its successor); and
- (c) In the case of a deputy acting for a director elected by a group of co-operative companies, on the recommendation of the companies for the time being constituting the group.]

(2) Repealed by s. 2 (4) of the Dairy Board Amendment Act 1992.

(3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a [director] appointed or elected under the same provision as the [director] of whom he is the deputy.

(4) No appointment of a deputy and no acts done by him as such, and no act done by the Board while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

Cf. 1953, No. 41, s. 6

Subs. (1) was substituted for the original subs. (1) and (2) by s. 2 (4) of the Dairy Board Amendment Act 1992.

In subs. (3) the word "director" where it first occurs was substituted for the words "member of the Board", and where it secondly occurs, it was substituted for the word "member" by s. 3 (3) of the Dairy Board Amendment Act 1980.

7. Extraordinary vacancies---[(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
- (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.]

(2) If any [director] dies or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(2A). Inserted by s. 5 of the Dairy Board Amendment Act 1980, and repealed by s. 2 (4) (a) of the Dairy Board Amendment Act 1988.

[(3) An extraordinary vacancy arising in respect of a director

appointed by the Minister shall be filled by the appointment of a new director by the Minister in accordance with section 3AA (a) of this Act.

(3A) Subject to subsection (3) of this section, an extraordinary vacancy shall be filled by the election or appointment (as the case may be) of a new director---

- (a) By the co-operative company or group of co-operative companies that elected or appointed the vacating director; or
- (b) By its successor.]

(4) Every person appointed or elected to fill an extraordinary vacancy shall be appointed or elected for the residue of the term for which the vacating [director] was appointed or elected.

(5) The powers of the Board shall not be affected by any vacancy in the membership thereof.

Cf. 1953, No. 41, s. 7

Subss. (1) and (1A) were substituted for the original subs. (1) by s. 8 of the Dairy Board Amendment Act (No. 2) 1996.

In subs. (2) the word "director" was substituted for the words "member of the Board" by s. 3 (3) of the Dairy Board Amendment Act 1980.

Subss. (3) and (3A) were substituted for the original subs. (3) by s. 2 (2) of the Dairy Board Amendment Act 1992.

In subs. (4) the word "director" was substituted for the word "member" by s. 3 (3) of the Dairy Board Amendment Act 1980.

8. Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

9. Repealed by s. 13 of the Dairy Board Amendment Act 1975.

10. Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

11. Repealed by s. 13 of the Dairy Board Amendment Act 1975.

12. Meetings of Board---(1) The first meeting of the Board shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Board shall be held at such times and places as the Board from time to time appoints.

(3) The Chairman of the Board, or any 3 [directors] thereof, may at any time call a special meeting of the Board.

(4) At all meetings of the Board the quorum necessary for the transaction of business shall be 7 [directors] [who shall include

directors appointed or elected by at least 3 different co-operative companies or (as the case may be) groups of co-operative companies].

(5) The Chairman shall preside at all meetings of the Board at which he is present.

(6) In the absence of the Chairman from any meeting of the Board a Deputy Chairman shall preside:

Provided that if there is more than one Deputy Chairman, the Board shall appoint one of the Deputy Chairmen to preside.

(7) All questions arising at any meeting of the Board shall be decided by a majority of the valid votes recorded thereon.

(8) At any meeting of the Board the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(9) A resolution in writing signed, or assented to by letter or telegram, by all [directors] of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.

(10) Subject to the provisions of this Act and of any regulations thereunder, the Board may regulate its procedure in such manner as it thinks fit.

Cf. 1953, No. 41, s. 10

In subs. (3), (4), and (9) the word "directors" was substituted for the word "members" by s. 3 (3) of the Dairy Board Amendment Act 1980.

In subs. (4) the words in the second set of square brackets were substituted for the former words by s. 2 (3) of the Dairy Board Amendment Act 1992.

13. Committees---(1) The Board may from time to time appoint a committee or committees, consisting of 2 or more persons, to advise the Board on such matters concerning the dairy industry or the production or marketing of any dairy produce as are referred to them by the Board.

(2) Every committee may, in addition, furnish to the Board reports on any matter concerning the dairy industry or the production or marketing of any dairy produce in respect of which the members of the committee have special knowledge or experience.

(3) Any person may be appointed to be a member of any committee, notwithstanding that he is not a [director] of the Board.

Cf. 1953, No. 41, s. 11

In subs. (3) the word "director" was substituted for the words "member of the Board" by s. 3 (3) of the Dairy Board Amendment Act 1980.

14. General functions of Board---(1) The general functions of the Board shall be---

- (a) Repealed by s. 2 (1) of the Dairy Board Amendment Act 1975.
- [(b) To acquire [[, pay for,]] and market such export produce as the Board may from time to time determine:]
- (c) To control the export of dairy produce other than dairy produce acquired and marketed by the Board:
- (d) To promote and organise the orderly development of the [dairy and bobby calf] industries in New Zealand with a view to maintaining and improving the standard of quality of the stock or produce derived or developed from those industries and expanding production of that stock or produce, and generally ensuring, as far as may be practicable, the adoption of measures and practices designed to promote greater efficiency in those industries, in furtherance of the interests and welfare of persons engaged therein:
- (e) To organise and develop the orderly marketing of vells and bobby calves, . . . and dairy stock, and, with the approval of the Minister, to take measures to promote greater efficiency in the marketing of meat derived from . . . bobby calves, and dairy stock:
- (f) To exercise and perform such functions, powers, and duties in relation to the marketing of [dairy produce] in New Zealand as are conferred or imposed on it under this Act or otherwise howsoever.

[(2) It shall also be a function of the Board to report to the Minister from time to time concerning trends and prospects for dairy produce in overseas markets and to consult with the Minister on the measures to be taken if any such trend, or any movement in costs or other trend or occurrence in New Zealand, is or is likely to be prejudicial to the economic stability of the dairy industry.]

(3) The Board shall have all such further functions as are by this Act or otherwise conferred upon it.

Cf. 1947, No. 2, s. 11 (1), (2); 1953, No. 41, s. 12

In subs. (1), para. (b) was substituted for the original para. (b) by s. 3 (2) of the Dairy Board Amendment Act 1988.

In subs. (1) (b) the words `` , pay for," were inserted by s. 3 (2) of the Dairy Board Amendment Act 1992.

In subs. (1) (d) the words ``dairy and bobby calf" were substituted for the words ``dairy, bobby calf, and pig" by s. 35 of the Pork Industry Act 1974, and in subs, (1) (e) the word ``pigs" was omitted in 2 places by the same section of that Act.

In subs. (1) (f) the words ``dairy produce" were substituted for the words ``butter and cheese" by s. 2 (3) of the Dairy Board Amendment Act 1975.

Subs. (2) was substituted for the original subs. (2) by s. 2 (4) of the Dairy Board Amendment Act 1975.

15. Board to comply with general trade policy of Government---In the exercise of its functions and powers under this Act the Board shall

comply with the general trade policy of the Government of New Zealand, and shall comply with any general or special directions given by the Minister pursuant to the policy of the Government in relation thereto.  
Cf. 1947, No. 41, s. 12

[PART IA

Capital and Assets of Board

[15A. Initial issue of shares---(1) The Board shall, as soon as reasonably practicable after this section comes into force,---

- (a) Make a determination in accordance with subsection (2) of this section of the number of kilograms of milksolids attributable to each qualifying company for the season ending on the close of the 31st day of May 1996; and
- (b) Issue to each qualifying company, as fully paid, one share for each kilogram of milksolids determined by the Board as attributable to that company.

(2) In determining the number of milksolids attributable to a qualifying company, the Board shall:

- (a) Take into account the number of kilograms of milksolids paid for by the Board in respect of any qualifying export produce and the number of kilograms of milksolids contained in any qualifying dairy produce of the qualifying company for that season; and
- (b) If the Board thinks fit, take into account the number of kilograms of milksolids contained in milk sold by the qualifying company to another qualifying company or acquired by the qualifying company from another qualifying company in that season; and
- (c) Have regard to such other matters as the Board thinks fit.

(3) In making a determination under subsection (2) of this section, the Board shall not take into account:

- (a) The same milksolids for more than one qualifying company; or
- (b) The same milksolids more than once for a qualifying company; or
- (c) Milksolids contained in milk or cream sold by the qualifying company for, or for resale for, human consumption in New Zealand in liquid form as milk or cream; or
- (d) Milksolids contained in export produce exported by the qualifying company pursuant to section 17 (1A) of this Act.

(4) The Board is not required to issue shares to a qualifying company under this section unless the company provides the Board with such information as the Board requires to enable it to make a determination in respect of the company under subsection (2) of this section.

[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.

(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 paid for by the Board in respect of any qualifying export produce and contained in any 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.

(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.

(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.

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

[15C. Limit on additional shares---(1) Subject to subsection (2) of this section, the Board shall not alter the ratio referred to in section 15B (2) of this Act so as to increase the number of shares that a qualifying company may be required to hold without the approval of qualifying companies holding shares in accordance with section 2D of this Act.

(2) The Board shall not alter the ratio referred to in section 15B (2) of this Act so as to increase the number of shares a qualifying company may be required to hold by more than 50 percent of the smallest number of shares that the qualifying company was required to hold at any time during the 5 seasons immediately preceding the date of the alteration in respect of qualifying export produce paid for by the Board to the company and qualifying dairy produce disposed of by the company in the season immediately preceding the date of the alteration without the approval of qualifying companies holding shares in accordance with section 2D of this Act, which section shall apply as if, for the expression "75 percent", there were substituted the expression "90 percent".

[15D. Issue of shares during transition period---(1) For the purposes of this section,---

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

$$a = b + c + d - f$$

$$a = b + d + e - f$$

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 or any wholly-owned subsidiary of the company, not being a subsidiary that is a qualifying company, in the season ending on the close of the 31st day of May 1996; and
- c is the number of shares that would be determined under section 15A of this Act if the reference in that section to the season ending on the close of the 31st day of May 1996 were a reference to whichever of the 3 seasons immediately preceding that date would, in applying that section, result in determining the highest number of shares; and
- d is the higher of zero or the number of kilograms of own-supply milksolids of that company or any wholly-owned subsidiary of the company, not being a subsidiary that is a qualifying company, in the season ending on the close of the 31st day of May 1996 less the number of shares issued to the company under section 15A of this Act; and
- 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; and
- f is the number of shares issued to the company pursuant to section 15A of this Act:

``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 on the 1st day of June 1980 and ending on the close of the 31st day of May 1996 expressed as a percentage of the total growth of the Board's reserves (including reserves that have been converted to capital) during that period:

``Transition period'' means the period commencing on the 1st day of June 1996 and ending on the close of the 31st day of May 2001.

(2) The Board may, and if the constitution so requires shall, issue to a qualifying company, during or in respect of the transition period and 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.

(3) Shares issued pursuant to subsection (2) of this section shall be issued in accordance with the constitution.

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

(5) 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.

[15E. 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.

(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.

(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.

[15F. Consideration for issue of shares---The consideration for the issue of shares by the Board must be the nominal value of the shares.

[15G. Rights and powers attaching to shares---A share confers on the holder---

(a) The right, subject to section 15X of this Act, to an equal share in dividends authorised by the Board; and

(b) Any other right expressly conferred by this Act or by the constitution on qualifying companies holding shares.

[15H. Types of shares---Subject to the constitution, different classes of shares may be issued by the Board.

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

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

(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
- (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.

(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.

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

(6) Every director who fails to comply with subsection (4) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

- (7) Nothing in this section entitles the Board to require the surrender of shares in a company by reason only of the fact that---
- (a) The company is an amalgamating company (but not the amalgamated company) in an amalgamation referred to in section 15V (1) (a) of this Act; or
  - (b) The shares in the company are acquired by a qualifying company in the manner described in section 15V (1) (b) of this Act; or
  - (c) The business or property of the company is acquired by a qualifying company in the manner described in section 15V (1) (c) of this Act.

[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 15I 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:

- (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:
- (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:

- (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).

(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 the [[Arbitration Act 1996]].

(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---

- (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.

In subs. (2) the Arbitration Act 1996, being the corresponding enactment in force at the date of this reprint, has been substituted for the Arbitration Act 1908, which was repealed by s. 18 of the Arbitration Act 1996.

[15L. Reduction in amount payable on surrender of shares---(1)  
Notwithstanding section 15K of this Act but subject to subsection (2) of this section, where the Board considers that the Board's right under section 15I (1) of this Act to require a qualifying company holding shares to surrender any or all of the shares held by the company has arisen for the purpose (whether or not it is one of a number of purposes) of enabling the qualifying company, or a qualifying company that is a related company, to derive a financial gain as a result of the issue during or in respect of the transition period of shares having different nominal values, the Board may reduce the amount of the consideration otherwise payable to the company under section 15K of this Act by such an amount as the Board considers appropriate in the circumstances.

(2) The amount payable on the surrender of the shares must not be less than the nominal value for which shares are issued by the Board in the season in which the surrender takes effect.

(3) In this section, "related company" has the same meaning as in section 2 of the Companies Act 1955 or section 2 of the Companies Act

1993, as the case may require.

[15M. Cancellation of shares surrendered---(1) Subject to sections 15N to 15P of this Act, shares that are surrendered pursuant to section 15I of this Act are deemed to be cancelled immediately the surrender takes effect.

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

- (a) The rights and privileges attached to that share expire; and
- (b) The share may be reissued, as a share having a nominal value, in accordance with section 15B of this Act.

[15N. 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 15M of this Act if---

- (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 held by the Board pursuant to this section at the time of the surrender which are of the same class, does not exceed 20 percent of the number of shares of that class previously issued by the Board, excluding shares deemed to be cancelled under section 15M of this Act; and
- (c) Any number of shares surrendered in excess of 25 percent of the 20 percent referred to in paragraph (b) of this subsection are required to have been surrendered only on grounds related to---
  - (i) Companies ceasing to be qualifying companies; or
  - (ii) The number of kilograms of milksolids paid for by the Board in respect of any qualifying export produce and contained in any qualifying dairy produce of qualifying companies for a season.

(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.

(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.

[15O. 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 15N of this Act shall not be exercised by or against the Board while it holds the share.

(2) Without limiting subsection (1) of this section, while the Board holds a share in itself pursuant to section 15N of this Act, the Board shall not pay or receive any dividend authorised or payable in respect of the share.

[15P. Reissue of shares held by Board---(1) A share held by the Board in itself may be transferred only to a qualifying company and, in any such case, section 15F of this Act shall apply to the transfer of the share as if the transfer were the issue of a share under section 15B of this Act.

(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.

[15Q. Shares not transferable---Except as provided in section 15P 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.

[15R. 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.

[15S. 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---

- (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.

[15T. 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.

[15U. Share certificates---The Board shall, in accordance with the constitution, issue share certificates to qualifying companies holding shares.

[15V. Amalgamations and acquisitions---(1) This section applies in any case where---

- (a) Two or more qualifying companies amalgamate pursuant to Part VA of

the Companies Act 1955 or Part XIII of the Companies Act 1993, as the case may be; or

- (b) A qualifying company acquires all the shares that carry voting rights in a company that, before the acquisition, was a qualifying company; or
- (c) A qualifying company acquires the whole or substantially the whole of the business or property of another qualifying company from the liquidator of the other qualifying company in consideration of shares, policies, or other like interests pursuant to section 24A of the Co-operative Dairy Companies Act 1949.

(2) In this section, the terms "predecessor" and "successor" have the following meanings:

- (a) In the case of an amalgamation referred to in subsection (1) (a) of this section, "predecessor" means an amalgamating qualifying company, not being the amalgamated company that results from the amalgamation, that is involved in the amalgamation, and "successor" means the amalgamated company;
- (b) In the case of an acquisition referred to in subsection (1) (b) of this section, "predecessor" means the company the shares in which are acquired by the qualifying company, and "successor" means the qualifying company;
- (c) In the case of an acquisition referred to in subsection (1) (c) of this section, "predecessor" means the company the whole or substantially the whole of the business or property of which is acquired by the qualifying company, and "successor" means the qualifying company.

(3) In any case to which this section applies, a successor is entitled, by giving notice in writing to the Board---

- (a) To acquire---
  - (i) The shares or rights to shares held by its predecessor; or
  - (ii) The rights to an issue of shares to which its predecessor would have been entitled under section 15A of this Act if it were a qualifying company on the coming into force of that section;
- (b) To the additional allocation (within the meaning of section 15D of this Act) of its predecessor in respect of which no shares have already been issued to that predecessor;
- (c) To exercise the rights and powers attached to, and obtain the benefits arising from, any such shares, or rights to shares, or issue of shares, or additional allocation of shares;
- (d) To treat the qualifying export produce, qualifying dairy produce, and town milk of its predecessor for any period preceding the amalgamation or acquisition and not already taken into account for the purposes of the issue of shares under this Act, as its own;
- (e) For the purposes of section 2D of this Act, to treat the qualifying milksolids, qualifying dairy produce, and qualifying export produce of its predecessor on the day preceding the amalgamation or acquisition, as its own.

(4) Where a successor gives a notice in relation to any matter referred to in any of paragraphs (a) to (e) of subsection (3) of this

section, the rights of its predecessor in relation to that matter shall cease with effect on and from the date on which the notice is given.

(5) Section 15Q of this Act does not apply to any amalgamation or acquisition referred to in subsection (1) of this section.

(6) The Secretary shall amend the share register to record any change in shareholding as a result of the exercise by a successor of any of the rights conferred by subsection (3) of this section.

In subs. (1) (c) the Co-operative Dairy Companies Act 1949 was repealed by s. 49 (1) of the Co-operative Companies Act 1996. See ss. 34-50 of that Act.

[15W. Application of section 15V to amalgamations and acquisitions before commencement date---(1) In this section, the term "co-operative dairy company" means a registered co-operative dairy company within the meaning of section 2 of this Act (as in force immediately before the commencement date).

(2) Where, during the period commencing on the 1st day of June 1996 and ending with the close of the day immediately preceding the commencement date,---

- (a) Two or more co-operative dairy companies amalgamated pursuant to Part VA of the Companies Act 1955 or Part XIII of the Companies Act 1993, as the case may be; or
- (b) A co-operative dairy company acquired all the shares that carry voting rights in another co-operative dairy company; or
- (c) A co-operative dairy company acquired the whole or substantially the whole of the business or property of another co-operative dairy company from the liquidator of the other co-operative dairy company in consideration of shares, policies, or other like interests pursuant to section 24A of the Co-operative Dairy Companies Act 1949,---

then section 15V of this Act shall apply in respect of the amalgamation or acquisition as if it had taken place on the commencement date and as if the companies were qualifying companies.

In subs. (2) (e) the Co-operative Dairy Companies Act 1949 was repealed by s. 49 (1) of the Co-operative Companies Act 1996. See ss. 34 to 50 of that Act.

[15X. 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.

(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.

- (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.

(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.

- (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.

(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.

(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.

[15Y. Meetings of qualifying companies holding shares---The constitution shall include provisions relating to meetings of qualifying companies holding shares, including provisions---

- (a) As to the circumstances when qualifying companies holding shares may call meetings:
- (b) As to the matters that may be considered at such meetings, being matters relating only to---
  - (i) The issue and holding of shares, dividends payable in respect of shares, and other matters contemplated by this Act relating to shares:
  - (ii) The use by the Board in carrying out its functions of capital raised, or to be raised, by the issue of shares:
  - (iii) Amendments to the constitution or the adoption of a new constitution:
  - (iv) Matters that require the approval of qualifying companies holding shares under section 2D of this Act:
- (c) As to the content and timing of a notice which a qualifying company holding shares may give to the Board for the holding of such a meeting:
- (d) 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:

- (e) Providing for resolutions in writing to be signed in lieu of a meeting:
- (f) As to the chairing and conduct of meetings of qualifying companies holding shares, including adjournments of such meetings:
- (g) As to voting at such meetings, including the requirements for a quorum, voting by representatives, and postal voting.

[15Z. Resolutions of qualifying companies holding shares---No resolution passed by qualifying companies holding shares is binding on the Board unless it is a resolution on a matter that requires approval under section 2D of this Act.

[15ZA. Management review by qualifying companies holding shares---(1) Notwithstanding anything in this Act or the constitution, the chairperson of a meeting of qualifying companies holding shares must allow a reasonable opportunity for representatives of such qualifying companies at the meeting to question, discuss, or comment on the management by the board of directors in relation to a matter referred to in section 15Y (b) of this Act.

(2) Notwithstanding anything in this Act or the constitution but subject to subsection (3) of this section, a meeting of qualifying companies holding shares may pass a resolution under this section relating to such management by the board of directors.

(3) A resolution passed pursuant to subsection (2) of this section is not binding on the board of directors.

[15ZB. Annual meeting of qualifying companies holding shares---(1) The board of directors must call an annual meeting of qualifying companies holding shares to be held---

- (a) Once in each calendar year; and
- (b) Not later than 6 months after the 31st day of May in each year; and
- (c) Not later than 15 months after the previous annual meeting.

(2) The Board must hold the meeting on the date on which it is called to be held.

[15ZC. Special meetings of qualifying companies holding shares---A special meeting of qualifying companies holding shares and entitled to vote on a matter---

- (a) May be called at any time by---
  - (i) The board of directors; or
  - (ii) A person who is authorised by the constitution to call the meeting;
- (b) Must be called by the board of directors on the written request of qualifying companies holding shares whose qualifying milksolids during the most recent complete season was, in the Board's

opinion, more than 5 percent of the aggregate quantity of the qualifying milksolids of all qualifying companies holding shares for the period.

[15ZD. 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.

[15ZE. Taxation---(1) The issue by the Board of shares to a qualifying company under section 15A or section 15D of this Act---

- (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) For the purposes of the definitions of the terms ``available subscribed capital" and ``bonus issue" in section OB 1 of the Income Tax Act 1994, in respect of the issue of shares by the Board under sections 15A and 15D of this Act, the Board and any company that is deemed pursuant to Part II of the Fifth Schedule to this Act to come into existence on the dissolution of the Board,---

- (a) Shall be deemed to have received, on the 1st day of June 2001, an aggregate amount of consideration of \$140,000,000; and
- (b) Shall be deemed to have received, on each succeeding 1st day of June up to and including the 1st day of June 2006, a further aggregate amount of consideration of \$140,000,000; and
- (c) Shall be treated as not having received any other amount of consideration in respect of the issue of any of such shares.

(3) Notwithstanding sections OD 3 (1) and OD 3 (2) of the Income Tax Act 1994, for the purposes of that Act, the voting interest in the Board of a qualifying company at any time equals that qualifying company's qualifying milksolids during the most recent complete season before that time expressed as a percentage of the aggregate quantity of the qualifying milksolids of all qualifying companies holding shares for that period.

(4) In applying subsection (3) of this section,---

- (a) In any case to which section 15V of this Act applies (other than as a result of the application of section 15W of this Act), the qualifying milksolids, qualifying dairy produce, and qualifying export produce of a predecessor on the day preceding the amalgamation or acquisition shall be deemed to be treated as the qualifying milksolids, qualifying dairy produce, and qualifying export produce of its successor:
- (b) In any case to which section 15W of this Act applies, the qualifying milksolids, qualifying dairy produce, and qualifying export produce of a predecessor on the commencement date shall

be deemed to be treated as the qualifying milksolids, qualifying dairy produce, and qualifying export produce of its successor (determined as if the amalgamation or acquisition had taken place on the commencement date and as if the companies were qualifying companies).

(5) For the purposes of the Income Tax Act 1994, a qualifying company to which the Board issues shares under section 15A of this Act is deemed to have---

- (a) Held those shares at all times prior to the issue of those shares; and
- (b) Subject to section OD 5 (5) of the Income Tax Act 1994, held the voting interest determined pursuant to subsections (3) and (4) of this section on the commencement date at all times prior to the commencement date.

(6) 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),---

- (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
- (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.

[15ZF. 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.]

Ss. 15A to 15ZF was inserted from 12 December 1996 by ss. 1 (3) and 9 of the Dairy Board Amendment Act (No. 2) 1996.

## PART II

### Marketing of Export Produce

16. Export produce to which this Part of this Act applies---(1)  
Repealed by s. 3 (2) of the Dairy Board Amendment Act 1988.

(2) Nothing in Part II of the Marketing Act 1936 shall apply with respect to any [export produce].

Cf. 1947, No. 2, s. 13; 1948, No. 55, s. 4 (2)

In subs. (2) the words in square brackets were substituted for the former words by s. 3 (2) of the Dairy Board Amendment Act 1988.

[17. Powers of Board as to acquisition and marketing of export

produce---(1) Without limiting any of the powers conferred on the Board by this Act or otherwise howsoever, the Board shall have full authority to make and carry out such arrangements as it thinks proper for any of the following purposes:

- (a) For the acquisition and marketing by the Board of [[export]] produce:
- (b) For the handling, pooling, transport, and storage of [[export]] produce:
- (c) For the consignment of [[export]] produce on such terms and in such quantities as it thinks fit:
- (d) For the insurance against loss of [[export]] produce:
- (e) For the establishment of a fund for the purpose of meeting any loss of or damage to [[export]] produce acquired by the Board or for the taking of such other steps as the Board thinks fit for that purpose:
- (f) For the further treatment, processing, or packing of [[export]] produce:
- (g) For furthering the sale of [[export]] produce overseas, [[or the export of dairy produce]]:
- (h) [[Subject to subsections (1A) to (1F) of this section, for]] prohibiting, restricting, and controlling the export of any [[export]] produce other than by the Board:
- (i) Generally for all such matters as are necessary for the exercise of the functions and powers of the Board under this Part of this Act.

[[1A) Any person who wishes to export dairy produce of any kind or description may apply to the Board for permission to do so, specifying the markets where the produce is intended to be sold; and, having had regard to---

- (a) The extent to which the markets are in states that do not impose quantitative restrictions on the importation of dairy produce; and
- (b) The extent to which the export of the produce to the markets might result in a direct or indirect reduction of the overall returns to the New Zealand dairy industry; and
- (c) Any other relevant guidelines for the time being established by the Board for the purposes of this section and published by the Board,---

the Board shall grant or refuse permission.

(1B) The Board may grant permission unconditionally, or subject to any conditions it thinks fit; and if any condition subject to which permission was given is not complied with, the Board may, by written notice to the person to whom it was given, revoke it.

(1C) The Board shall give a person it refuses permission written notice of its reasons for doing so.

(1D) The Board may refuse to decide whether or not to give its permission until the applicant has given the Board all information that (in the Board's opinion held on reasonable grounds) it is necessary for the Board to have in order to decide.

(1E) On request by any person, the Board shall, without charge, give the person written notice of the guidelines for the time being in force under subsection (1A) (c) of this section.

(1F) Where any person has applied to the Board for permission to export dairy produce of any kind or description, specifying the market or markets where it is intended to be sold, the Board shall not acquire any export produce of that kind or description owned by the applicant and intended to be sold in that market or one or more of those markets unless---

- (a) The Board has refused its permission; or
- (b) The permission has expired; or
- (c) The Board has given the applicant its permission but later revoked it under subsection (1B) of this section; or
- (d) The applicant has consented to the acquisition.]]

(2) Repealed by s. 3 (2) of the Dairy Board Amendment Act 1988.]

This section was substituted for the original s. 17 by s. 3 of the Dairy Board Amendment Act 1972.

In subs. (1) the word ``export" in double square brackets wherever it appears was substituted for the word ``dairy" by s. 3 (2) of the Dairy Board Amendment Act 1988.

In subs. (1) (g) the words in the second set of double square brackets were substituted for the original words by s. 6 of the Dairy Board Amendment Act 1988.

In subs. (1) (h) the words in the first set of double square brackets were substituted for the word ``For" by s. 11 (2) of the Dairy Board Amendment Act 1992.

Subss. (1A) to (1F) were substituted for the subs. (1A) (as inserted by s. 6 of the Dairy Board Amendment Act 1980) by s. 11 (1) of the Dairy Board Amendment Act 1992.

[18. Board to acquire export produce---(1) The Board shall inform the supplier of any [[export]] produce that it proposes to acquire pursuant to this Part of this Act, either by notice in writing delivered to him or by notice in the Gazette, of the time at which or the event upon the happening of which the ownership of the [[export]] produce will pass to the Board; and that [[export]] produce shall become the property of the Board at that time or, as the case may be, upon that event:

Provided that the said notice may also prescribe events upon the happening of which, after [[export]] produce has become the property of the Board thereunder, that [[export]] produce will become the property of the supplier again; and if any such event so happens, that [[export]] produce shall then become the property of the supplier, and any money paid to the supplier by the Board in respect thereof shall become a debt due to the Board by the supplier and may be deducted by the Board from any money thereafter payable to the supplier by the Board.

(2) The Board may include in any notice given pursuant to subsection (1) of this section details of the manner in which the supplier of any [[export]] produce is to deal with it after it has become the property of the Board pursuant to that notice; and the supplier shall, after that

[[export]] produce has become the property of the Board, deal with it accordingly.

(3) Where at any time after any [[export]] produce becomes the property of the Board under this section it is found to be contaminated or to contain foreign matter to such an extent that it does not conform to the specifications prescribed in the Board's order for that produce, the Board may deduct from any amount payable by it to the supplier an amount equal to the difference between the price paid or payable by the Board for the affected [[export]] produce (plus all costs and expenses incurred by the Board in disposing of the [[export]] produce and in compensating the purchaser from the Board of the [[export]] produce) and the amount for which the Board disposed of it:

Provided that this subsection shall not apply to any [[export]] produce proved by the supplier to have become contaminated or to have acquired foreign matter after it became the property of the Board and without negligence on the part of the supplier.

(4) Whenever [[export]] produce has become the property of the Board in accordance with subsection (1) of this section, the price thereof, as fixed in accordance with this Part of this Act, shall become payable, and, after deduction therefrom of any money payable to the Board by the supplier thereof, whether pursuant to section 41 of this Act or otherwise, shall be paid to that supplier as soon as practicable after the passing of ownership thereof to the Board:

Provided that if the price payable for the said [[export]] produce has not been fixed at the time when it becomes payable as provided in this subsection, the Board may make advances on account of the amount payable, pending its ascertainment, and, if the amounts advanced exceed the amount ascertained to be payable, the amount of the excess shall be repayable forthwith to the Board, and may be deducted by the Board from any money payable to the supplier who received the advances.

(5) Any [[export]] produce that has become the property of the Board in accordance with this section may be withheld from export if, in the opinion of the Board, it is required for consumption or use in New Zealand, or the Board may, if it thinks fit, sell any such [[export]] produce to any person who undertakes to export and market it in accordance with any agreement made with the Board.]

This section was substituted for the original s. 18 by s. 4 (1) of the Dairy Board Amendment Act 1975.

Throughout this section the word ``export" in double square brackets was substituted for the word ``dairy" by s. 3 (2) of the Dairy Board Amendment Act 1988.

19-25. Repealed by s. 7 (1) of the Dairy Board Amendment Act 1988.

[Payments to manufacturers

[25A. Board to pay prices determined---The Board shall pay for the

export produce it acquires the appropriate prices determined under section 26C of this Act.

[26. Establishing values for components of milk---(1) During the first month of each season, the Board may establish for the season values (per kilogram) for any components of milk it thinks fit.

(2) The Board shall not without the [[approval]] of the dairy industry establish a value for any component of milk other than milkfat or protein.

(3) Notwithstanding subsection (2) of this section, if the Board does not establish any values under subsection (1) of this section for a season during the first month of the season, there shall be deemed to have been established for the season under that subsection, with effect from the commencement of the season, the values in force immediately before that commencement.

(4) If at any time during a season the Board is of the opinion that a value established for the season under this section should be increased, it may, with effect on and after any day during the season for which it was established, disestablish the value and establish an increased value in its place.

(5) If, at any time during a season, the Board is of the opinion that---

- (a) A value established for the season under this section should be decreased; but
- (b) The decrease should not have retroactive effect,---

it may, with effect on and after any day not earlier than the day on which it does so, disestablish the value and establish a decreased value in its place.

(6) Subject to subsection (7) of this section, if at any time during a season the Board is of the opinion that a value established for the season under this section should be decreased in respect of any period before the day on which it does so, it may, in respect of the period concerned, disestablish the value and establish a decreased value in its place.

(7) The Board shall not, in respect of any period before the day on which it does so, disestablish a value and establish a decreased value in its place unless---

- (a) The dairy industry has approved the Board's doing so; and
- (b) The decreased value is not less than 90 percent of the highest value for the component concerned previously in force on any day during the period.

(8) Where the Board establishes a value under this section with effect on and after a day earlier than the day of its establishment, or with effect in respect of a period before the day of its establishment, it shall make appropriate consequential changes to the prices paid or to be paid for dairy produce it has acquired or acquires during the season

concerned.

(9) In establishing values under this section, the Board shall have regard to the following matters:

- (a) The desirability of maintaining the stability and efficiency of the dairy industry:
- (b) The amount that the dairy produce acquired by the Board is then realising, and market prospects for the season concerned:
- (c) The present and prospective state of the Board's financial accounts and reserves:
- (d) Any other matters the Board thinks relevant.

In subs. (2) the word "approval" was substituted for the word "consent" by s. 12 of the Dairy Board Amendment Act (No. 2) 1996.

[26A. Formulas for calculation of prices---(1) Subject to subsection (2) of this section, during the first month of each season, the Board may establish formulas for the calculation of prices to be paid by it for export produce it acquires during the season.

(2) The Board shall not without the approval of the dairy industry establish formulas for the calculation of prices to be paid for export produce it acquires during a season that differ from those established for the previous season.

(3) If the Board does not establish any formulas under subsection (1) of this section during the first month of a season, there shall be deemed to have been established under that subsection, in respect of the season, the formulas established for the previous season.

(4) 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:

- (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:
- (d) Different prices for export produce produced in different periods:
- (e) Different prices for quantities of export produce made in different degrees of conformity with any manufacturing programme or quota requirements of the Board:
- (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.

26B. Not enacted.

[26C. Determining prices for export produce---As soon as is practicable after a new value has been established pursuant to section

26 of this Act, the Board shall determine, according to the appropriate formulas, the gross prices to be paid for export produce it acquires during the period for which the new value applies.

[26D. Realisation differential schemes---(1) The Board may from time to time establish schemes comprising---

- (a) A trigger weight of any specified dairy product or dairy products, or of any specified component or components of milk; and
- (b) A system for ascertaining---
  - (i) Whether the Board is to make or recover payments; and
  - (ii) The manufacturers to or from whom the Board may make or recover payments in respect of their own-supply [[milksolids]] for the season concerned; and
  - (iii) The amounts of those payments,---if during any season for which the scheme is in force there is in the opinion of the Board manufactured in New Zealand more than the trigger weight of the product, products, component, or components, specified.

(2) Where such a scheme provides for the Board to recover payments from manufacturers, the Board may recover from any manufacturer ascertained under it, as a debt due to the Board or by deduction from any amount payable to the manufacturer by the Board, all or any part of any amount ascertained under it in respect of the manufacturer.

(3) Where such a scheme provides for the Board to make payments to manufacturers, the Board shall pay any manufacturer ascertained under it the amount ascertained under it in respect of the manufacturer.

(4) Such a scheme is in force only for the season containing the 1st day of August next following its establishment.

(5) The Board shall not establish such a scheme without the approval of the dairy industry.

In subs. (1) (b) (ii) the word "milksolids" was substituted for the word "milkfat" from 1 September 1996 by ss. 1 (2) and 10 of the Dairy Board Amendment Act 1996.

[27. Adjustment where local price for dairy produce not equivalent to export price---(1) In this section, unless the context otherwise requires,---

- "Acquisition price", in relation to any dairy produce, means the price at the time when, in the opinion of the Board, the produce was manufactured, payable by the Board for export produce of that class acquired by the Board:
- "Approved class of dairy produce", subject to subsection (11) of this section, means dairy produce of a kind or description for the time being approved by the Board (whether before, on, or after the commencement of the Dairy Board Amendment Act 1988) for the purposes of this section:
- "Notional price" means a notional price fixed under this section; and, in relation to any approved class of dairy produce, means a

notional price for the time being fixed in respect of dairy produce of that class.

(2) The Board may at any time fix, in respect of any approved class of dairy produce, a notional price, which shall take effect from a date (not being earlier than the date on which it is fixed) the Board specifies.

(3) The Board may at any time amend any notional price for the time being in force; and any amendment shall take effect on a date (not being earlier than the date on which the original notional price took effect) that is either---

- (a) A date specified in that behalf by the Board at the time of making the amendment; or
- (b) A date upon which conditions specified by the Board at the time of making the amendment have been fulfilled.

(4) Where the Board amends any notional price, it shall specify a period of such number of whole months as it thinks fit from the date on which the amendment takes effect during which subsections (6) and (8) of this section shall apply in respect of the approved class of dairy produce concerned.

(5) Subject to subsection (6) of this section, the Board may pay to every manufacturer that satisfies the Board that, during any month when a notional price was in force in respect of an approved class of dairy produce, it disposed of any dairy produce of that class manufactured by it otherwise than to the Board, the amount (if any) by which the value of the produce calculated on the basis of its acquisition price exceeded its value calculated on the basis of the notional price.

(6) Where, in the opinion of the Board, any dairy produce is disposed of otherwise than to the Board during a month that forms part of a period to which this subsection applies, the amount (if any) payable under subsection (5) of this section to the manufacturer that manufactured it shall be the sum of---

- (a) The amount (if any) by which the value of the produce calculated on the basis of its acquisition price exceeded the higher of the following amounts:
  - (i) The value of the produce calculated on the basis of the notional price for dairy produce of that class that came into force at the commencement of the period;
  - (ii) The value of the produce calculated on the basis of the notional price for dairy produce of that class that was in force immediately before that commencement; and
- (b) Such sum as the Board thinks fit, being not less than the product of a quantity of dairy produce that bears the same proportion to the total quantity of dairy produce of that class manufactured by the manufacturer that was (in the opinion of the Board) disposed of otherwise than to the Board, in the 12 months before the commencement of the period, as the period bears to 12 months, and the lower of the following:
  - (i) The difference between the prices specified in subparagraphs (i) and (ii) of paragraph (a) of this subsection;
  - (ii) The amount (if any) by which the lower of those prices is

less than the acquisition price of the produce.

(7) Subject to subsection (8) of this section, the Board may recover from every manufacturer, that, in the opinion of the Board, during any month when a notional price was in force in respect of an approved class of dairy produce, disposed of any dairy produce of that class manufactured by it otherwise than to the Board, the amount (if any) by which the value of the produce calculated on the basis of the notional price exceeded the value of the produce calculated on the basis of its acquisition price, by---

- (a) Directing the manufacturer to pay the amount to the Board; or
- (b) Deducting the amount from any money payable by the Board to the manufacturer; or
- (c) So directing as to part of that amount and so deducting the residue.

(8) Where, in the opinion of the Board, any dairy produce is disposed of otherwise than to the Board during any month that forms part of a period to which this subsection applies, the amount (if any) recoverable under subsection (7) of this section from the manufacturer that manufactured it shall be the sum of---

- (a) The amount (if any) by which the value of the produce calculated on the basis of its acquisition price was less than the lower of the following amounts:
  - (i) The value of the produce calculated on the basis of the notional price for dairy produce of that class that came into force on the commencement of the period; and
  - (ii) The value of the produce calculated on the basis of the notional price for dairy produce of that class that was in force immediately before that commencement; and
- (b) Such sum as the Board thinks fit, being not more than the product of a quantity of dairy produce that bears the same proportion to the total quantity of dairy produce of that class manufactured by that manufacturer that was (in the opinion of the Board) disposed of otherwise than to the Board in the 12 months before the commencement of the period, as the period bears to 12 months, and the lower of the following:
  - (i) The difference between the prices specified in subparagraphs (i) and (ii) of paragraph (a) of this subsection:
  - (ii) The amount (if any) by which the higher of those prices is greater than the acquisition price of the dairy produce.

(9) As soon as is practicable after the end of every season the Board shall, as the case requires, pay to or recover as aforesaid from each New Zealand manufacturer such amounts as, in the opinion of the Board, are necessary to make the total amounts under this section paid to the manufacturer by the Board or, as the case may require, recovered from the manufacturer by the Board, in respect of dairy produce manufactured by it, and disposed of otherwise than to the Board during that season, equal to the amounts that would have been so paid or recovered if all amounts during that season payable under this section had been calculated on the basis of the appropriate acquisition prices adjusted to take account of any relevant payments calculated in respect of that season under section 28 of this Act.

(10) As soon as is practicable after the 31st day of May in each year, the Board shall, as the case may require, pay to or recover as aforesaid from each New Zealand manufacturer such amounts as, in the opinion of the Board, are necessary to make the total amounts under this section paid to the manufacturer by the Board or, as the case may require, recovered from the manufacturer by the Board in respect of dairy produce manufactured by it, and disposed of otherwise than to the Board during the previous 12 months, equal to the amounts that would have been so paid or recovered if all amounts payable in respect of dairy produce of the class concerned under subsection (6) (b) or subsection (8) (b) of this section during any period specified under subsection (4) of this section occurring during that 12 months had been calculated on the basis of the quantity of dairy produce of that class manufactured by the manufacturer disposed of otherwise than to the Board during each month forming part of the period.

(11) The Board shall not approve any kind or description of dairy produce without the approval of the dairy industry for the purposes of this section.]

[[28. Annual trading surpluses---(1) As soon as practicable after the end of every season, the Board shall assess its trading balance for the season.

(2) Subject to this section, if the balance shows a surplus, the Board may distribute all or any part of it to manufacturers of dairy produce from whom the Board acquired dairy produce (or, as the case requires, the components concerned, or dairy produce from which the products concerned were manufactured) during the season to which the surplus relates.

(3) In determining whether or not to distribute to manufacturers of dairy produce any part of a surplus, the Board shall take into account---

- (a) The desirability of the Board having financial reserves adequate for the performance and exercise of its functions and powers:
- (b) The profitability and economic position of the dairy farming industry at the time.

(4) Any surplus the Board decides to distribute shall be distributed---

- (a) To manufacturers that are qualifying companies holding shares; or
- (b) To manufacturers that are qualifying companies holding shares and to manufacturers that are not qualifying companies holding shares---

on any basis the Board thinks fair and equitable.]] ]

This section was substituted for the former s. 28 from 12 December 1996 by ss. 1 (3) and 13 of the Dairy Board Amendment Act (No. 2) 1996.

Ss. 25A, 26, 26A, 26C, 26D, 27 and 28 were substituted for the former ss. 19-25, 26, 26A-26D, 27 and 28 by s. 7 (1) of the Dairy Board Amendment Act 1988.

[28A. Interim distributions---(1) At any time during a season the Board may assess its trading balance for the season and decide whether or not there is likely to be a surplus at the end of the season if no interim distribution (or further interim distribution) is made, and (if so) how great the surplus is likely to be.

(2) If the Board expects there to be a surplus, it may make to manufacturers an interim distribution of amounts not greater in total than the expected amount of the surplus.

(3) In determining whether or not to make an interim distribution, the Board shall take into account---

- (a) The matters specified in sections 26 (9) (b), 26 (9) (c), and 28 (3) (b) of this Act; and
- (b) Any other matters the Board thinks fit.

(4) Every interim distribution shall be made in accordance with section 28 (4) of this Act as if the amounts distributed are a surplus.]

This section was inserted by s. 12 of the Dairy Board Amendment Act 1992.

29. Repealed by s. 7 of the Dairy Board Amendment Act 1967.

30. Board may acquire shares in certain companies---[(1) Subject to subsection (1A) of this section, the Board may from time to time acquire or subscribe for shares or stock in any company that may lawfully carry on the business of producing, processing, marketing, distributing, or promoting, the sale of dairy produce.

[[ (1A) The Board shall not, without the consent of the dairy industry, acquire or subscribe for shares or stock in any company registered under---

- (a) The Co-operative Dairy Companies Act 1949; or
- (b) Part III of the Co-operative Companies Act 1996.]]

(1B) Except as provided in subsection (1) of this section, the Board shall not subscribe for or otherwise acquire shares in any company.]

(2) The Board may exercise all rights and powers as the holder of shares and stock so acquired or subscribed for by it and may advance to or deposit with a company in which shares or stock have been acquired or subscribed for by the Board as aforesaid money required by the company for carrying on its business.

[(3) The Board may . . . give such guarantee, indemnity, or security as it thinks fit to or for the benefit of any company in which it has acquired or subscribed for shares or stock under this section.]

(3A) Inserted by s. 3 of the Dairy Board Amendment Act 1963, and repealed by s. 8 (3) of the Dairy Board Amendment Act 1988.

(4) Any shares or stock so required or subscribed for by the Board may be held by the Board or may be held on behalf of the Board by any member or officer of the Board:

Provided that no member or officer of the Board who holds any shares or stock on behalf of the Board shall vote at any meeting of any such company otherwise than in accordance with such directions as may be given by the Board.

(5) Any member of the Board (whether the Chairman or not) holding office as director of a company in which shares or stock have been acquired or subscribed for by the Board as aforesaid may---

- (a) Receive from the company all the remuneration to which he may be entitled as holder of the office:
- (b) Retain so much of that remuneration (if any) as the [Board] may from time to time approve.

(6) Repealed by s. 8 (5) of the Dairy Board Amendment Act 1988.

(7) Repealed by s. 17 (2) of the Dairy Board Amendment Act 1992. Cf. 1947, No. 2, s. 18A; 1953, No. 36, s. 3; 1960, No. 55, s. 2

Subss. (1), (1A), and (1B) were substituted for the original subs.

(1) by s. 8 (1) of the Dairy Board Amendment Act 1988.

Subs. (1A) was substituted for the former subs. (1A) (as so substituted) by ss. 1 (2) and 11 of the Dairy Board Amendment Act 1996 from 1 September 1996.

Subs. (3) was substituted for the original subs. (3) by s. 3 of the Dairy Board Amendment Act 1963.

In subs. (3) words were omitted by s. 8 (2) of the Dairy Board Amendment Act 1988.

In subs. (5) (b) the word "Board" was substituted for the former words by s. 8 (4) of the Dairy Board Amendment Act 1988.

31. Repealed by s. 13 (1) of the Dairy Board Amendment Act 1992.

32-36. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

37, 38. Repealed by s. 9 (1) of the Dairy Board Amendment Act 1988.

### PART III

#### Further Powers of Board With Respect to Dairy Industry

39. Development of dairy industry---(1) Without limiting any of the powers conferred on the Board by this Act or otherwise howsoever, it is hereby declared that in the exercise of its functions the Board may from time to time---

- (a) Devise, promote, and carry out, by such means as commend themselves to the Board, measures for the improvement of dairy stock, . . . or produce derived from dairy stock, . . . including the testing for production or quality of dairy stock .

. . and the development of artificial breeding of dairy stock .

. . .:

- (b) Promote, by way of subsidy, or otherwise, the carrying out of any research or experimental work undertaken in New Zealand or elsewhere with a view to improving the quality of dairy stock, . . . or the produce derived from dairy stock, . . . or to developing the classes of dairy stock . . . or the classes of produce derived from dairy stock . . . available for production in New Zealand:
- (c) Promote and organise, by such means as the Board thinks fit, the circulation of information in relation to the [dairy or bobby calf] industries for the benefit and guidance of persons engaged in any of those industries:
- (d) Promote the sale and consumption of products derived from dairy stock . . . whether by advertising or giving publicity to the merits and quality thereof, or otherwise howsoever:
- (e) Act in combination or association with any body of persons, whether incorporated or not and whether in New Zealand or elsewhere, that may be engaged, concerned, or interested in the production, marketing, or distribution of any of the products of the agricultural, pastoral, or horticultural industries, and share the costs and expenses involved in any such combination or association, or subscribe for or otherwise acquire shares or other interests in any body corporate or other body established for the purpose of giving effect to any such combination or association, in such manner as may be mutually agreed upon:
- [(ea) Act in combination or association with the New Zealand Meat . . . Board and the New Zealand Wool Board, [[or with either of those Boards]], in carrying out or assisting any project that may be considered by the Board directly or indirectly to benefit any primary industry, on terms of sharing the costs and expenses involved in that combination or association in such proportions or in such manner as may be mutually agreed upon:]
- (f) Undertake or carry out, with the prior approval of the Minister, any other act, matter, or thing in relation to the [dairy or bobby calf] industries which the Minister considers to be necessary or desirable in the interests of persons engaged in any of those industries.

(2) The Board shall have all such other powers and authorities as are necessary, conducive, or incidental to the performance of its functions and powers under this Part of this Act.

Cf. 1953, No. 41, s. 12 (2)

In subs. (1) (a), (b), and (d) the words "or pigs" were omitted, as indicated by points of omission, by s. 35 of the Pork Industry Act 1974.

In subs. (1) (c) and (f) the words "dairy or bobby calf" were substituted for the words "dairy, bobby calf, or pig" by s. 35 of the Pork Industry Act 1974.

In subs. (1), para. (ea) was inserted by s. 2 of the Dairy Board Amendment Act 1971, and in para. (ea) the word "Producers" was omitted, as indicated by points of omission, by s. 82 (1) of the Meat Board Act 1997 and the words in double square brackets were substituted for the former words (as substituted by s. 61 (1) of the

Wool Marketing Corporation Act 1972) by s. 61 (1) of the Wool Board Act 1997.

40. Repealed by s. 14 (1) of the Dairy Board Amendment Act 1992.

40A. Inserted by s. 6 of the Dairy Board Amendment Act 1965, and repealed by s. 5 (2) of the Dairy Board Amendment Act 1972.

41. Levy on dairy produce---(1) For the purpose of providing funds to enable the Board to carry out the functions specified in paragraphs (d) and (e) of subsection (1) of section 14 of this Act and to exercise the powers conferred on the Board by this Part of this Act, there shall be paid to the Board, by way of a general levy on dairy produce manufactured [, or intended to be manufactured,] for sale, such charges as may from time to time be fixed by the Board . . . .

(2) Differential charges may be prescribed in respect of dairy produce exported from New Zealand and dairy produce intended for consumption in New Zealand.

[(3) The Board shall not fix or amend any charge under subsection (1) of this section without the approval of the dairy industry; but every charge fixed or amended (whether before or after the commencement of section 15 of the Dairy Board Amendment Act 1992) shall continue in force from season to season until the Board revokes, amends, or replaces it.]

Cf. 1953, No. 41, s. 14

In subs. (1) the words in square brackets were inserted by s. 8 of the Dairy Board Amendment Act 1972, and words were omitted by s. 15 (1) of the Dairy Board Amendment Act 1992.

Subs. (3) was added by s. 15 (2) of the Dairy Board Amendment Act 1992.

42. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

42A. Inserted by s. 7 of the Dairy Board Amendment Act 1965, and repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

43. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

44. Repealed by s. 7 of the Dairy Board Amendment Act 1967.

[45. Superannuation schemes---(1) The Board is hereby authorised to promote, establish, maintain, and vary schemes for the purpose of providing payment, by the Board or by any other corporate body, of

superannuation or retiring allowances for---

- (a) Employees, or employees of any class or classes, of companies owning or occupying dairy factories; or
- (b) Employees, or employees of any class or classes, of the Board or of any subsidiary of the Board.

(2) No money payable to any person under a scheme under subsection (1) of this section shall in any way be assigned or charged, or pass to any other person by operation of law.

(3) No money payable to any person under a scheme under subsection (1) of this section on the death of a contributor shall be assets for the payment of the person's debts and liabilities.

(4) The Board may invest or reinvest---

- (a) Any money received by the Board under this section; and
- (b) Any money held in the Dairy Industry Superannuation Account,---

in any investment authorised by regulations made under the Superannuation Schemes Act 1976 for trustees of approved schemes for employees within the meaning of that Act.]

This section was substituted for the original s. 45 (as variously amended) by s. 16 (1) of the Dairy Board Amendment Act 1992.

46. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

A new s. 46 was enacted on 28 July 1998 by s. 14 (1) of the Trustee Amendment Act 1988. That s. 46 was repealed from 28 July 1988 by s. 2 (1) of the Trustee Amendment Act (No. 2) 1988.

## PART IV

### Miscellaneous Provisions

47. Officers of Board---(1), (2) Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

(3) All persons who at the commencement of this Act are officers or servants of the Dairy Board or the Commission shall be deemed to become officers or servants of the Board, and for the purposes of any fund or scheme established for the purpose of providing superannuation or retiring allowances the service of any such persons as officers or servants of the Dairy Board or the Commission, as the case may be, shall be deemed to have been service as officers or servants of the Board.

Cf. 1947, No. 2, s. 24; 1953, No. 41, s. 20

As to the salaries of certain officers, see s. 12 (1) (a) (ii) of the Higher Salaries Commission Act 1977. See also ss. 30-32 of that Act.

48. Performance of functions by Ministry of Agriculture and Forestry or other agent on behalf of Board---The Board may from time to time, with the consent of the Minister, arrange that any of its duties or functions under this Act may be performed on its behalf, whether in New Zealand or elsewhere, by [the Ministry of Agriculture and Forestry] or by some other agent appointed for the purpose, and [the Ministry of Agriculture and Forestry] is hereby authorised to act as agent for the Board.

Cf. 1947, No. 2, s. 27 (1)

The references to the Ministry of Agriculture and Forestry were substituted by ss. 2 and 5 (1) (c) and (d) of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 for references to the Ministry of Agriculture and Fisheries which were substituted for references to the Department of Agriculture by s. 3 (6) (b) of the Ministry of Agriculture and Fisheries Amendment Act 1972.

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.

(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.

(3) A delegation under this section may be made to---

- (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.

(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.

(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.

(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
- (b) Affect the responsibility of the Board for the actions of the person acting under the delegation.]

This section was substituted for the former s. 48A (as inserted by s. 10 (1) of the Dairy Board Amendment Act 1980) by s. 14 (1) of the Dairy Board Amendment Act (No. 2) 1996.

49. Contracts of Board---(1) [Subject to section 48A of this Act, any] contract which, if made between private persons, must be by deed shall, if made by the Board, be in writing under the common seal of the Board.

[(2) Any contract that, if made between private persons, must be signed by the parties to be charged therewith shall, if made by the Board, be either under the common seal of the Board, or signed by a [[person acting on behalf of and under the express or implied authority of the Board]].

(3) Any contract that, if made between private persons, may be made orally may be similarly made by or on behalf of the Board by any [[person acting on behalf of and under the express or implied authority of the Board]].]

(4) The Board may, by writing under its common seal, empower any person, either generally or in respect of any specified matter, to execute on its behalf in any place in or beyond New Zealand, instruments under or for the purposes of this Act. An instrument executed by such an attorney on behalf of the Board shall bind the Board and if executed as a deed shall have the same effect as if it were under the common seal of the Board.

(5) Notwithstanding anything to the contrary in the foregoing provisions of this section, no contract made by or on behalf of the Board shall be invalid by reason only that it was not made in manner provided by this section, if it was made pursuant to a resolution of the Board or to give effect to a resolution of the Board.

Cf. 1947, No. 2, s. 28; 1953, No. 41, s. 22

In subs. (1) the words in square brackets were substituted for the word "Any" by s. 10 (2) of the Dairy Board Amendment Act 1980.

Subss. (2) and (3) were substituted for the original subss. (2) and (3) by s. 12 of the Dairy Board Amendment Act 1975.

In subs. (2) the words in double square brackets were substituted for the former words by s. 11 (1) of the Dairy Board Amendment Act 1980.

In subs. (3) the words in double square brackets were substituted for the former words by s. 11 (2) of the Dairy Board Amendment Act 1980.

50. Unauthorised expenditure---The Board may, for purposes not authorised by this Act or by any other Act, in any financial year expend any sum or sums not amounting in the whole to more than [\$1,000].

Cf. 1953, No. 41, s. 18

51. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

51A. Inserted by s. 5 (1) of the Dairy Board Amendment Act 1967, and repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

51B. Inserted by s. 2 of the Dairy Board Amendment Act 1979, and repealed by s. 16 (1) of the Trustee Amendment Act 1988.

52-54. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

55. Board to have powers of Commission of Inquiry---For the purpose of conducting any inquiry necessary or desirable for the carrying out of any of its functions under this Act and for the purpose of obtaining any information that may be deemed necessary or of value to enable the Board to fulfil its functions, the Board shall be deemed to be a Commission appointed under the Commissions of Inquiry Act 1908 and, subject to the provisions of this Act and of any regulations under this Act, all the provisions of that Act shall apply accordingly.

Cf. 1947, No. 2, s. 17; 1948, No. 55, s. 6

[55A. Board records---The Board must keep the following documents at the Board's principal office:

- (a) The constitution of the Board:
- (b) Minutes of all meetings and resolutions of qualifying companies holding shares within the last 7 years:
- (c) An interests register:
- (d) Minutes of all meetings and resolutions of directors, directors' committees, and committees appointed pursuant to section 13 of this Act within the last 7 years:
- (e) Certificates given by directors under this Act within the last 7 years:
- (f) The full names and addresses of the current directors:
- (g) Copies of all written communications to all qualifying companies holding shares in their capacities as such during the last 7 years; including annual reports made under section 67A of this Act:
- (h) Copies of all financial statements and group financial statements required to be completed by this Act or the Financial Reporting Act 1993 for the last 7 completed seasons:
- (i) The accounting records required by section 55C of this Act for the current season and for the last 7 completed seasons:
- (j) The share register.

[55B. Inspection of records by directors---(1) Subject to subsection (2) of this section, every director is entitled, on giving reasonable notice, to inspect any of the documents referred to in section 55A of this Act---

- (a) In written form; and
- (b) Without charge; and
- (c) At a reasonable time specified by the director.

(2) The High Court may, on application by the Board, if it is satisfied that---

- (a) It would not be in the Board's interests for a director to inspect the documents; or
- (b) The proposed inspection is for a purpose that is not properly connected with the director's duties,---

direct that the documents need not be made available for inspection or limit the inspection of them in any manner it thinks fit.

[55C. Accounting records to be kept---(1) The board of directors must cause accounting records to be kept that---

- (a) Correctly record and explain the transactions of the Board; and
- (b) Will at any time enable the financial position of the Board to be determined with reasonable accuracy; and
- (c) Will enable the directors of the Board to ensure that the financial statements of the Board comply with section 10 of the Financial Reporting Act 1993 and any group financial statements comply with section 13 of that Act; and
- (d) Will enable the financial statements of the Board to be readily and properly audited.

(2) Without limiting subsection (1) of this section, the accounting records must contain---

- (a) Entries of money received and spent each day and the matters to which it relates:
- (b) A record of the assets and liabilities of the Board:
- (c) A record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices:
- (d) A record of stock held at the end of the season together with records of any stocktakings during the season:
- (e) A record of services provided and relevant invoices.

(3) The accounting records must be kept---

- (a) In written form and in English; or
- (b) In a form or manner in which they are easily accessible and convertible into written form in English.]

Ss. 55A to 55C were inserted by s. 15 of the Dairy Board Amendment Act (No. 2) 1996.

56. Repealed by s. 5 (4) (a) of the Dairy Board Amendment Act 1988.

57. Repealed by s. 10 of the Land Tax Amendment Act 1989.

58-65. Repealed by s. 11 (3) (a) of the Dairy Board Amendment Act 1988.

[ [[66. Board to prepare financial statements---(1) As soon as

practicable after the 31st day of May but not later than the 31st day of October in each year, the Board shall prepare---

- (a) Financial statements for the Board for the season ending on that 31st day of May; and
- (b) Financial statements for the Board and every subsidiary (within 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 for the season ending on that 31st day of May.

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

(3) The financial statements referred to in subsection (1) (b) of this section shall comply, and be audited in accordance, with the Financial Reporting Act 1993 as if the Board were a reporting entity and the Board and its subsidiaries were a group within the meaning of that Act.]]

This section was substituted for the former s. 66 (as substituted by s. 12 of the Dairy Board Amendment Act 1988) by s. 16 (1) of the Dairy Board Amendment Act (No. 2) 1996.

[[67. Statements to be audited---(1) Subject to subsection (2) of this section,---

- (a) The statements referred to in section 66 of this Act shall be audited by an auditor appointed or reappointed by the Board within 12 months before the end of the period to which the statements relate; but
- (b) The Board shall not appoint or reappoint an auditor without the approval of the dairy industry (obtained within the period within which the Board is required to appoint or reappoint the auditor).

(2) Where, at the end of the period to which any statement referred to in section 66 of this Act relates, there is no person appointed auditor under subsection (1) of this section, the statement shall be audited by an auditor appointed by the Minister.

(3) For the purposes of the audit of any statement referred to in section 66 of this Act, an auditor appointed under this section has, and may exercise and perform, all the functions, duties, and powers, of an auditor under the [Companies Act 1993.] ]]

This section was substituted for the former s. 67 (as substituted by s. 12 of the Dairy Board Amendment Act 1988) by s. 19 (1) of the Dairy Board Amendment Act 1992.

In subs. (3) the words in single square brackets were substituted for the words "Companies Act 1955" by s. 2 of the Company Law Reform (Transitional Provisions) Act 1994.

[67A. Annual report and statements to be laid before House of

Representatives---(1) As soon as is practicable after the statements referred to in section 66 of this Act have been prepared in respect of any season and audited, the Board shall prepare, give to the Minister, and take all reasonable steps to ensure that there are given to all manufacturers, a report of its proceedings and operations for the season [(including a report on the exercise of its statutory powers)] together with a copy of the statements and the report of the [[auditor]] on them.

(2) As soon as is practicable after receiving copies of any such report, statements, and report of the [[auditor]], the Minister shall lay copies before the House of Representatives.

[(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.]] ]

In subs. (1) the words in the first set of double square brackets were inserted by s. 18 of the Dairy Board Amendment Act 1992.

In subs. (1) and (2) the word ``auditor" was substituted for the words ``audit office" by s. 19 (2) of the Dairy Board Amendment Act 1992.

Subs. (3) was added by s. 17 of the Dairy Board Amendment Act (No. 2) 1996.

Ss. 66 to 67A were inserted by s. 12 of the Dairy Board Amendment Act 1988.

[67B. Performance and efficiency audits---(1) From time to time there shall be carried out, in accordance with this section, an audit of how effectively and efficiently the Board is performing in terms of the policies, procedures, and strategies of the Board and its operating companies.

(2) While an audit shall relate to---

- (a) The Board's performance as at a particular day; and
- (b) The Board's prospective future performance,---

the person carrying it out may have regard to its performance during the 5 years before that day.

(3) At least 4 months before the day as at which an audit is to be conducted, the Board shall consult the Minister as to the terms of reference for the audit.

(4) No more than one month after the consultation the Minister shall give the Board written notice of the Minister's views on the terms of reference for the audit.

(5) Subject to subsection (6) of this section, the terms of reference for an audit shall be determined by the Board.

(6) The Board---

- (a) Shall not determine terms of reference for an audit without the approval of the dairy industry; and
- (b) Shall not seek the approval of the dairy industry of proposed terms of reference for an audit before making known to the industry the views expressed by the Minister under subsection (4) of this section.

(7) Notwithstanding subsection (5) of this section, where---

- (a) The Board has failed to comply with subsection (3) of this section in relation to any audit; or
- (b) The Board has failed to gain the approval of the dairy industry to any proposed terms of reference for an audit,---

the terms of reference for the audit shall be prescribed by the Governor-General by Order in Council, made on the recommendation of the Minister.

(8) The Minister shall not recommend the making of an Order in Council under subsection (7) of this section without consulting the Board.

(9) Subject to subsections (10) and (11) of this section, every audit shall be carried out by a person appointed by the Board, at least one month before the day as at which it is to be carried out, after consultation with the Minister.

(10) Where the Board---

- (a) Has failed or refused to consult the Minister before purporting to appoint a person to carry out an audit; or
- (b) Has not appointed a person to carry out an audit at least one month before the day as at which it is to be carried out,---

the audit shall be carried out by a person appointed by the Minister after consultation with the Board.

(11) The Board shall not appoint a person to carry out an audit without the consent of the dairy industry.

(12) The Board's performance and efficiency includes---

- (a) The extent (if any) to which the Board has established objectives for the performance of its functions; and
- (b) Any such objectives established; and
- (c) The progress the Board is making towards the achievement of any such objectives established; and
- (d) The extent (if any) to which the Board has put in place policies and strategies to use its resources effectively and efficiently for the purpose of achieving its objectives; and
- (e) Any such policies and strategies put in place; and
- (f) The manner in which any such policies and strategies put in place were put in place;---

but the fact that any other matter is determined under subsection (5) of this section (or prescribed under subsection (7) of this section) is conclusive evidence that it relates to the performance and efficiency of the Board.

(13) Every person who carries out an audit shall, after carrying it out, prepare a written report on the conclusions the person reached as a result of carrying it out; and shall give copies of the report to the Minister and the Board.

(14) If asked by a co-operative company or a supplying shareholder to do so, the Board shall, without charge, give the company or shareholder a written summary of the conclusions and recommendations contained in any report a copy of which has been given to the Board under subsection (13) of this section.

(15) The Board shall pay the reasonable costs of every audit; and the person carrying it out may recover those costs accordingly as a debt due to the person.

(16) The reasonable costs of an audit are---

- (a) The remuneration agreed on the appointment by the Board (or, as the case may be, by the Minister) of the person carrying it out to be paid to the person for carrying it out and reporting to the Minister and the Board; and
- (b) The person's reasonable costs in doing so.

(17) The Official Information Act 1982 does not apply to any report prepared under subsection (13) of this section.

(18) The first audit shall be carried out as soon as may be after the 1st day of June 1993; and shall relate to the Board's performance as at that day.

(19) Other audits shall be carried out as soon as may be after---

- (a) The 1st day of June in the year 5 years after the day as at which the most recent audit was carried out; or
- (b) Any earlier 1st day of June fixed by the Board;---

and shall relate to the Board's performance as at that day.]

This section was inserted by s. 20 of the Dairy Board Amendment Act 1992.

68. Offences---(1) Every person commits an offence against this Act who---

- (a) Without lawful excuse acts in contravention of or fails to comply in any respect with any provision of Part II of this Act or any regulations under this Act;
- (b) With intent to deceive, makes any false or misleading statement or any material omission in any communication with or application or return to the Board (whether in writing or otherwise) for the purposes of Part II of this Act or any regulations made under this Act.

(2) Every person who commits or attempts to commit, or counsels, procures, aids, abets, or incites any other person to commit any offence against this Act, or against any regulations made under this Act, shall, where no other penalty is specifically prescribed, be liable on summary conviction to a fine not exceeding [\$400], in the case of an individual, and in the case of a company or other corporation, to a fine not exceeding [\$2,000.]

(3) Any prosecution for an offence against this Act, or against any regulations as aforesaid, may be instituted at any time within one year after the commission of the offence.

Cf. 1947, No. 2, s. 35

69. Regulations---(1) The Governor-General may from time to time, by Order in Council, in accordance with recommendations made by the Board to the Minister, make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act, and may make all such other regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1) of this section, it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a), (b) Repealed by ss. 15 (3) and 16 (2) respectively of the Dairy Board Amendment Act 1992.
- (c) Regulating and controlling the testing for production or quality of dairy cattle . . . :
- (d) Regulating the amounts, grades, or qualities of butter or cheese which may be manufactured for consumption in New Zealand:
- (e) Regulating the distribution and sale of butter or cheese in New Zealand, and authorising the Board to acquire for resale in New Zealand, or to sell, any butter or cheese:
- (f) Licensing persons engaged in the business of distributing or selling (otherwise than by retail) butter or cheese intended for consumption in New Zealand:
- (g) Obtaining any information or particulars that may be required for the effective performance of the functions of the Board under this Act:
- (h) Prescribing offences against the regulations.

(3) On the coming into force of any regulations made for the purposes of paragraph (e) of subsection (2) of this section, the provisions of section 21 of the Marketing Act 1936 shall, to the extent to which they are contrary to the regulations, cease to apply with respect to butter and cheese to which the regulations apply.

(4) Regulations made under this section may be so made as to apply generally throughout New Zealand or within any specified part or parts thereof, or within the whole of New Zealand except such part or parts as may be specified in the regulations.

(5) Repealed by s. 11 of the Regulations (Disallowance) Act 1989.

Cf. 1947, No. 2, s. 34; 1953, No. 41, s. 25

In subs. (2) (c) the words "or pigs" were omitted by s. 35 of the Pork Industry Act 1974.

See S.R. 1987/131 and S.R. 1989/127.

70-72. Repealed by s. 13 of the Dairy Board Amendment Act 1975.

73. Repeals---The enactments specified in the Third Schedule hereto are hereby repealed.

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## SCHEDULES

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### FIRST SCHEDULE

Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

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### SECOND SCHEDULE

Repealed by s. 2 (5) (a) of the Dairy Board Amendment Act 1992.

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### THIRD SCHEDULE

Section 73

#### Enactments Repealed

1937, No. 17	---The Finance Act 1937: Part III. (1957 Reprint, Vol. 3, p. 803.)
1942, No. 14	---The Finance Act (No. 2) 1942: Section 2.
1947, No. 2	---The Dairy Products Marketing Commission Act 1947. (1957 Reprint, Vol. 3, p. 771.)
1947, No. 45	---The Finance Act (No. 2) 1947: Section 5. (1957 Reprint, Vol. 3, p. 803.)
1948, No. 35	---The Finance Act 1948: The Schedule, so far as it relates to the Dairy Products Marketing Commission Act 1947.
1948, No. 55	---The Dairy Products Marketing Commission Amendment Act 1948. (1957 Reprint, Vol. 3, p. 804.)
1950, No. 10	---The Dairy Products Marketing Commission Amendment Act 1950. (1957 Reprint, Vol. 3, p. 805.)

1951, No. 10---The Dairy Products Marketing Commission Amendment Act 1951. (1957 Reprint, Vol. 3, p. 805.)

1953, No. 36---The Dairy Products Marketing Commission Amendment Act 1953. (1957 Reprint, Vol. 3, p. 806.)

1953, No. 41---The Dairy Board Act 1953. (1957 Reprint, Vol. 3, p. 729.)

1955, No. 25---The Dairy Board Amendment Act 1955. (1957 Reprint, Vol. 3, p. 745.)

1956, No. 56---The Dairy Products Marketing Commission Amendment Act 1956. (1957 Reprint, Vol. 3, p. 806.)

1957, No. 46---The Dairy Board Amendment Act 1957. (1957 Reprint, Vol. 3, p. 745.)

1957, No. 93---The Income Tax Assessment Act 1957: The Third Schedule, so far as it relates to the Dairy Products Marketing Commission Act 1947.

1957, No. 95---The Dairy Products Marketing Commission Amendment Act 1957. (1957 Reprint, Vol. 3, p. 808.)

1958, No. 62---The Dairy Board Amendment Act 1958.

1958, No. 111---The Dairy Products Marketing Commission Amendment Act 1958.

1960, No. 55---The Dairy Products Marketing Commission Amendment Act 1960.

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#### [FOURTH SCHEDULE

##### Section 3AD

##### 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
- (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:
- (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, officer, trustee, or 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 shareholder, 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.

(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
- (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.]

This Schedule was added by s. 18 of the Dairy Board Amendment Act (No. 2) 1996.

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## [FIFTH SCHEDULE

### Section 15ZD(2)

#### 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):

``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 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 2D 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 15N 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 Registrar of Companies is satisfied that 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 1996, the Registrar shall---

(a) Register the company as a co-operative company under that Act; and

(b) Issue a certificate of registration under that Act.

(2) The company shall, on registration as a co-operative company under the Co-operative Companies Act 1996, be deemed, with effect on and from the date of its registration as a company, to have been registered as a co-operative company under that Act.

(3) The certificate of registration is conclusive evidence that the company was, on the date of its registration as a company, registered as a co-operative company under the Co-operative Companies Act 1996.

9. Purchase of shares by Board---(1) As soon as practicable after the date on which this Schedule comes into force, 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.

(2) Subject to any deduction for any amount due and unpaid on the shares, the Board shall pay the same price for all shares of the same class that the Board is required to purchase from qualifying companies

holding shares.

(3) Nothing in subclause (2) of this clause limits or affects clause 10 of this Part of this Schedule.

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 called The New Zealand Dairy Board Limited; 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) The purchase price of the shares shall be reduced by the amount of any such dividend.

(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 qualifying milksolids during the most recent complete season was, in the Board's opinion, more than 90 percent of the aggregate quantity of the qualifying 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.

## 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.]

This Schedule was added by ss. 1 (3) and 19 of the Dairy Board Amendment Act (No. 2) 1996 from 12 December 1996.

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