

Kiwifruit Export Regulations 1999
(SR 1999/310)

Note

These regulations are administered in the Ministry of Agriculture and Forestry.

ORDER IN COUNCIL

At Wellington this 20th day of September 1999

Present:

His Excellency the Governor-General in Council

PURSUANT to Part 2 of the Kiwifruit Industry Restructuring Act 1999, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and on the recommendation of the Minister of Food, Fibre, Biosecurity and Border Control, makes the following regulations.

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1 Title and commencement

- (1) These regulations may be cited as the Kiwifruit Export Regulations 1999.
- (2) Regulation 47 comes into force on the 28th day after the date of the notification of these regulations in the Gazette.
- (3) The rest of these regulations come into force on 1 April 2000.

2 Interpretation

- In these regulations, unless the context otherwise requires,—
Act means the Kiwifruit Industry Restructuring Act 1999

Board means the board established under Part 5

Collaborative marketing approval means an approval by the Board under regulation 28

Collaborative marketing arrangement means an arrangement by which a person may export New Zealand grown kiwifruit in collaboration with ZGL

Core business—

- (a) Means the purchase of New Zealand-grown kiwifruit for export where the point of acquisition of title to fruit is at FOBS and the export of that fruit:
- (b) Excludes the export at FOBS of kiwifruit for consumption in Australia:
- (c) Excludes the sale of kiwifruit in New Zealand:

Export authorisation means the authorisation granted by the Board to ZGL

Export ban means the restriction on exports (otherwise than for consumption in Australia) in regulation 3

Director has the same meaning as in section 126 of the Companies Act 1993

Financial statements means—

- (a) A statement of financial position; and
- (b) A statement of financial performance; and
- (c) A statement of cash flows; and
- (d) A statement of movements in equity; and
- (e) Notes to the statements referred to in paragraphs (a) to (d), including information relating to transactions between related parties; and
- (f) A statement of accounting policies— prepared in accordance with generally accepted accounting practice (within the meaning of that term in section 3 of the Financial Reporting Act 1993):

Financial year means a period of 12 months commencing on 1 April in any year and ending with 31 March in the following year

FOBS means stowed on board the ship or aircraft on which the kiwifruit is exported

Handbook means the Kiwifruit Information Disclosure Handbook published under regulation 13

Independent auditor means a person who—

- (a) Is qualified for appointment as auditor of a company under the Companies Act 1993; and
- (b) Has no relationship with, or interest in, the person that is required, by any provision of these regulations, to publicly disclose information:

Information disclosure requirements means the requirements in regulations 12 to 21

Justifiable discrimination has the same meaning as in regulation 10

Manager, in relation to a person,—

- (a) Means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person; and
- (b) Includes, for the avoidance of doubt, a director of that person:

Non-discrimination rule means the rule in regulation 9

Non-diversification rule means the rule in regulation 11

Publicly disclose means to make information available in the following ways

- (a) By making copies of that information available for inspection, during ordinary office hours, at ZGL's or the Board's (as the case may be) principal office; and
- (b) At the request of any person, by posting a copy to the person or providing the person with a copy of that information for collection, during ordinary office hours, from ZGL's or the Board's (as the case may be) principal office:

Responsible chief executive, in relation to any function or matter, means the chief executive for the time being of a responsible Ministry who has, with the authority of the Prime Minister, assumed responsibility for that function or matter

Season means a period of 12 months commencing on 1 April in any year and ending with 31 March in the following year

Supplier means a person from whom ZGL acquires the property in kiwifruit grown in New Zealand

ZGL means the company incorporated under the Companies Act 1993 as at 1 April 2000 with the name **Zespri Group Limited** and its subsidiaries.

Part 1

Restrictions on export of kiwifruit

3 Export ban

- (1) No person may export kiwifruit otherwise than for consumption in Australia except as authorised or approved by the Board in accordance with these regulations.
- (2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$50,000, who knowingly and without lawful excuse contravenes subclause (1).

Part 2

ZGL's export authorisation

4 Board must authorise ZGL to export kiwifruit

- (1) The Board must authorise ZGL to export kiwifruit.
- (2) The terms and conditions of the authorisation must be in accordance with regulations 5 to 7 and must be in writing.

5 Requirements of authorisation

- The export authorisation must—
 - (a) Have no expiry date:
 - (b) Contain provisions to ensure that the Board will not incur any liabilities in respect of the export ban or anything done or omitted to be done by ZGL:
 - (c) Require the point of acquisition of title to kiwifruit purchased for export to be at FOBS (or, at ZGL's discretion, later in the supply chain than FOBS).

6 Matters that must not be included in authorisation

- (1) The export authorisation must not provide for any of the following:
 - (a) A limit on the percentage of the kiwifruit crop that is available to ZGL to export (other than via collaborative marketing):
 - (b) A requirement that ZGL purchase any particular proportion of the kiwifruit crop:
 - (c) The basis on which ZGL is to purchase and pay for kiwifruit (other than in connection with the non-discrimination rule):
 - (d) An assertion of rights by the Board over any of ZGL's assets, including intellectual property:
 - (e) The Board to have any right or obligation to approve any transactions entered into by ZGL (other than in respect of collaborative marketing):
 - (f) The Board to have any rights or powers in respect of kiwifruit pool administration or control (other than in respect of collaborative marketing):
 - (g) The Board to have any right or power to receive any of ZGL's revenue or income whatsoever (except the fees referred to in regulation 7(1)(c)):
 - (h) Any events on which the export authorisation is to terminate (except in the case of ZGL's insolvency):
 - (i) Compensation for any person if the export ban is revoked:

- (j) Any matters other than those reasonably necessary for the effective implementation of the requirements in regulation 5 or the discretionary requirements in regulation 7:
 - (k) Any variation of the provisions of Part 3.
- (2) **Insolvency** means—
- (a) The appointment of a receiver; or
 - (b) The appointment of a liquidator or interim liquidator under Part 16 of the Companies Act 1993; or
 - (c) The removal of ZGL from the register of companies kept pursuant to section 360(1)(a) of the Companies Act 1993; or
 - (d) The appointment of a statutory manager under Part 3 of the Corporations (Investigation and Management) Act 1989.

7 Discretionary requirements of authorisation

- (1) The export authorisation must—
 - (a) Provide for an enforcement regime to ensure reasonable compliance with the matters referred to in regulation 33(1)(b):
 - (b) Provide for the Board to make determinations on, and administer, the exemptions in respect of the information disclosure requirements under regulation 21:
 - (c) Provide for ZGL to pay to the Board—
 - (i) The reasonable costs incurred by the Board in administering ZGL's export authorisation, including monitoring and enforcement under regulation 33(1)(b); and
 - (ii) The reasonable costs of the Board's communications with producers; but
 - (iii) No other fees:
 - (d) Require ZGL to enter into collaborative marketing arrangements approved by the Board:
 - (e) Provide for any other matters reasonably necessary for the effective implementation of the requirements in this regulation or regulation 5.
- (2) The enforcement regime must include provisions for—
 - (a) The identification of enforcement events:
 - (b) Procedures which comply with natural justice:
 - (c) Remedies, including provisions enabling affected persons to initiate, by way of complaint to the Board, an action through the enforcement regime and to receive an appropriate remedy if their claim is made out.
- (3) The Board may decide, following consultation with ZGL, how these terms are specified in the authorisation.
- (4) However, the Board must—
 - (a) Submit to the Minister for approval, in sufficient time to enable the implementation of the first authorisation on 1 June 2000, the range of enforcement options to be included in the enforcement regime; and
 - (b) Submit to the Minister for approval any proposed variation in that range of enforcement options; and
 - (c) Comply with any request made by the Minister arising from the submission for approval.
- (5) This regulation is subject to regulation 6.

Part 3 **Mitigation measures**

8 Purpose of Part

- The purpose of this Part is to mitigate the potential costs and risks arising from the monopsony, by—
 - (a) Encouraging innovation in the kiwifruit industry while requiring that providers of capital agree to the ways in which their capital is used outside the core business; and
 - (b) Promoting efficient pricing signals to shareholders and suppliers; and
 - (c) Providing appropriate protections for ZGL's shareholders and suppliers; and
 - (d) Promoting sustained downward pressure on ZGL's costs.

Non-discrimination rule

9 Duty not to discriminate unjustifiably

- ZGL, and its directors and managers, must not unjustifiably discriminate among suppliers and potential suppliers in respect of—
 - (a) A decision on whether to purchase kiwifruit; or
 - (b) The terms of the purchase contract.

10 Justifiable discrimination

- (1) Discrimination (or the extent of the discrimination) is justifiable if it is on commercial grounds.
- (2) A commercial ground includes, but is not limited to, matters relating to product features, quality, quantity, timing, location, risk, or potential returns.

Non-diversification rule

11 Non-diversification rule

- (1) ZGL must not carry out activities, and must not own or operate assets, that are not necessary for the core business unless—
 - (a) The providers of capital used or to be used for those activities have been asked and have agreed to the use of their capital for those activities; and
 - (b) The shareholders and suppliers who have not agreed are not exposed to more than a minimal risk from those activities.
- (2) Subclause (1) does not apply to sales of New Zealand-grown kiwifruit in New Zealand where the level of sales is incidental to the size of the total New Zealand market provided that the incidental sales are not more than 300,000 trays of kiwifruit sold by ZGL in the New Zealand market.
- (3) Subclause (1) does not apply to sales of New Zealand-grown kiwifruit in Australia.
- (3A) Subclause (1) does not apply to procuring the supply and marketing, before 1 April 2001, of non-New Zealand-grown produce that is underwritten by Kiwifruit International Limited (**KIL**) in accordance with the Annual Business Plan for 1 April 2000 to 31 March 2001 agreed to by Zespri International Limited (**ZIL**) and KIL under the agreement relating to the management of KIL and any funding of ZIL made between KIL and ZIL and dated 10 August 1999.
- (4) In this regulation, **use of capital** includes, for the avoidance of doubt,—
 - (a) The use of any resources that are or would be represented on ZGL's balance sheet as shareholders funds:
 - (b) The entering into of any arrangements that provide, directly or indirectly, for recourse to shareholders or suppliers funds or that would otherwise expose those funds to risk:
 - (c) The use of any funds that would be available for payment to suppliers or distribution to shareholders.

Subclause (3A) was inserted, as from 11 May 2000, by regulation 3 Kiwifruit Export Amendment Regulations (No 2) 2000 (SR 2000/56).

Information disclosure

12 Financial statement disclosure

- (1) Within 4 months after the end of each financial year (beginning with the 2000/01 financial year), ZGL must publicly disclose financial statements for that financial year in respect of each of the business activities defined in the Handbook.
- (2) Those financial statements must—
 - (a) Be prepared in accordance with the allocation methodology in the Handbook; and
 - (b) Disclose the information specified in the Handbook.

13 Kiwifruit Information Disclosure Handbook

- The responsible chief executive may from time to time publish a Handbook which may provide for all or any of the following:
 - (a) The definition of ZGL's business activities:
 - (b) The allocation methodology that must be used for preparing the financial statements and allocating the expenses, revenues, assets, and liabilities amongst ZGL's business activities:
 - (c) The disclosure of the manner in which the allocation methodology has been applied:
 - (d) The information that must be specified in the financial statements disclosed under regulation 12:
 - (e) The disclosure of transfer payments (whether actual or notional) amongst the business activities:
 - (f) The disclosure of financial performance measures, or information from which financial performance measures may be derived, or both:
 - (g) The form of the disclosures (including requirements as to separate, consolidated, and reconciliation information):
 - (h) The audit and certification of disclosed information:
 - (i) The retention of data on which disclosed information is based and associated documentation.

14 Disclosure of kiwifruit purchase conditions

- (1) ZGL must publicly disclose, 1 month before coming into effect,—
 - (a) Its terms and conditions, and any amendments to those terms and conditions, for the purchase of kiwifruit grown in New Zealand; and
 - (b) The period for which each set of terms and conditions, including amendments, is applicable.
- (2) If it is not practicable to make the disclosure under subclause (1) 1 month before coming into effect, ZGL must make that disclosure as soon as practicable and no later than the date of coming into effect.
- (3) ZGL must publicly disclose, within 3 months after the end of each financial year (beginning with the 2000/01 financial year),—
 - (a) The number of suppliers to which each set of terms and conditions were applied; and
 - (b) The volume of kiwifruit to which each set of terms and conditions were applied.
- (4) ZGL must publicly disclose,—
 - (a) Within 3 months after the beginning of each financial year, the methodology used at the beginning of that financial year to determine the payments for kiwifruit; and
 - (b) Any change in the methodology, or adoption of a different methodology, within 1 month of the change or the different methodology taking effect.
- (5) Every disclosure under subclause (4) must include key details of the methodology including—
 - (a) The relationship between purchase prices and selling prices; and

- (b) The key costs (including cost of capital incurred by ZGL) and other factors that explain the differences between purchase prices (paid to suppliers) and selling prices; and
- (c) Any other information on which ZGL is relying to justify discrimination amongst suppliers.

15 Disclosure relating to collaborative marketing

- Within 3 months after the end of each season (beginning with the 2000/01 season), the Board must publicly disclose for that season—
 - (a) The identity of each person approved by the Board to be a collaborative marketing approval holder; and
 - (b) The volume of kiwifruit marketed by each collaborative marketing approval holder; and
 - (c) Financial information to enable an assessment to be made as to whether the net returns to suppliers in respect of each collaborative marketing arrangement were greater than would have been the case if the collaborative marketing arrangement had not been approved, including the methodology used by ZGL to allocate costs to the collaborative marketing approval holder.

Miscellaneous provisions relating to information disclosure

16 No charge for supplying information

- ZGL and the Board must not charge for supplying any information required to be publicly disclosed under this Part.

17 Period of disclosure

- (1) ZGL must comply with the following rules:
 - (a) Information that is publicly disclosed must be publicly disclosed for a period of at least 4 years:
 - (b) Information relating to any terms and conditions under regulation 14 that is publicly disclosed must be publicly disclosed for a period of at least 4 years or until the terms and conditions are no longer applied, whichever is the longer.
- (2) A period runs from the time the information is first required to be publicly disclosed in accordance with these regulations.

18 Information required to be certified by auditor

- (1) An independent auditor must provide a signed auditor's report with respect to the financial statements required by regulation 12 to be publicly disclosed.
- (2) The auditor must give a qualified audit report if, in the auditor's opinion, the financial statements—
 - (a) Fail to comply with these regulations or generally accepted accounting practice; or
 - (b) Fail to give a true and fair view of the matters to which they relate (having regard to any information or explanations that may have been added by the directors of ZGL, as the case may be, under section 11(2) or section 14(2) of the Financial Reporting Act 1993)—
 and the qualified audit report must explain the respects in which the statements so fail.
- (3) An independent auditor must certify the financial performance measures specified in the Handbook in accordance with regulation 13(f).

19 Time limit for responding to requests for information

- A person required by a provision of these regulations to publicly disclose any information must provide a copy of the disclosed information within 2 weeks of receiving a request to provide any other person with a copy of that disclosed information.

20 Information to be supplied to Board

- (1) ZGL must supply to the Board—
 - (a) A copy of all statements and information required to be publicly disclosed under this Part within 1 week after the statements and information are first required to be made so available;
 - (b) Any further statements, reports, agreements, particulars, and other information requested in writing by the Board for the purpose of monitoring ZGL's compliance with these regulations.
- (2) ZGL, on receipt of a request made under subclause (1)(b), must comply with that request within 1 month after receiving the request or within such further period as the Board in any particular case may allow.
- (3) All statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(a) must be certified by a director of ZGL as a true copy of the information that has been publicly disclosed by ZGL.
- (4) All statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(b) must be accompanied by a certificate from a director of ZGL that—
 - (a) Declares that the statements, reports, agreements, particulars, and information are the statements, reports, agreements, particulars, and information requested by the Board; and
 - (b) To the best of the director's knowledge, contain all the statements, reports, agreements, particulars, and information in the possession of ZGL which relate to the request.

21 Exemptions

- (1) The Board may exempt ZGL from a provision of the information disclosure requirements if satisfied that granting the exemption would not significantly prejudice the effective scrutiny of ZGL's performance.
- (2) The Board may allow ZGL to disclose information in confidence to the Board (instead of being publicly disclosed) if satisfied that to publicly disclose the information would be likely to prejudice unreasonably the commercial position of ZGL.

Corporate form

22 Continuing requirements as to ZGL Limited's corporate form

- (1) ZGL Limited must—
 - (a) Remain a company registered only under the Companies Act 1993;
 - (b) Have no voting shares other than ones that are fully tradeable (not based on any supply criteria) at least among producers, where **producers**—
 - (i) means producers under the share allocation plan under the Act and persons who became or become producers after 31 March 2000; and
 - (ii) Includes lessees under a lease of at least 1 year's duration of land on which kiwifruit is produced; and
 - (iii) Includes any other person determined by the board of directors of ZGL Limited to be a producer for the purpose of tradeability of shares.
 - (c) [Revoked]
- (2) ZGL Limited must have no rules about maximum shareholding.
- (3) This regulation does not prevent ZGL Limited from having shares with voting rights based on supply criteria under regulation 23(1)(a)(ii).

Subclause (1)(b)(i) was substituted, as from 11 May 2000, by regulation 4(1) Kiwifruit Export Amendment Regulations (No 2) 2000 (SR 2000/56).

Subclause (1)(b)(i) was further substituted, as from 1 July 2001, by regulation 3(1) Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Subclause (1)(c) was inserted, as from 11 May 2000, by regulation 4(2) Kiwifruit Export Amendment Regulations (No 2) 2000 (SR 2000/56).

Subclause (1)(c) was revoked, as from 1 July 2001, by regulation 3(2) Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Subclause (2) was substituted, as from 1 July 2001, by regulation 3(3) Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Subclause (3) was inserted, as from 9 February 2001, by regulation 3(4) Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Protections for shareholders

23 Contents of constitution

- (1) Section 36(2) of the Companies Act 1993 applies to the shares issued under the share allocation plan provided for in the Act as follows:
 - (a) the rights specified in section 36(1)(a) of the Companies Act 1993 may be negated or altered by the constitution of the company only—
 - (i) [Revoked]
 - (ii) for the purpose of limiting shareholders' voting rights based on supply of kiwifruit to ZGL Limited:
 - (b) the rights specified in section 36(1)(b) and (c) of the Companies Act 1993 may not be negated or altered.
- (2) Section 131(1) of the Companies Act 1993 applies to the directors of ZGL Limited and, for the purposes of section 131(4), ZGL Limited is not a joint venture company.
- (3) Section 76(1)(c) of the Companies Act 1993 does not apply.
- (4) All directors of ZGL Limited must be elected according to the procedure set down in section 155(1)(a) of the Companies Act 1993.
- (5) Subclause (4) does not prevent an appointment to fill a casual vacancy pending the next election of directors by shareholders.

Subclause (1) was substituted, as from 11 May 2000, by regulation 5 Kiwifruit Export Amendment Regulations (No 2) 2000 (SR 2000/56).

Subclause (1)(a) was substituted, as from 9 February 2001, by regulation 4 Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Subclause (1)(a)(i) was revoked, as from 1 July 2001, by regulation 5 Kiwifruit Export Amendment Regulations 2001 (SR 2001/8).

Part 4 Collaborative marketing

24 Purpose of Part

- The purpose of this Part is to enable the Board to require ZGL to enter into collaborative marketing arrangements for the purpose of increasing the overall wealth of New Zealand kiwifruit suppliers.

25 Exercise of Board's powers and functions

- The powers and functions of the Board under this Part are to be exercised in a manner that seeks to best achieve the purpose in regulation 24.

Allocation of part of kiwifruit crop for collaborative marketing

26 Allocation power

- (1) The Board may, no later than 1 month after the commencement of each kiwifruit season, direct ZGL to make a certain volume of kiwifruit available for collaborative marketing arrangements in that current season.
- (2) That volume may be set either as a percentage by volume or an amount by volume based on the New Zealand-grown kiwifruit that ZGL purchased in the previous season, or has purchased so far in the current season, or will purchase in the current season.

Collaborative marketing approvals

27 Applicants

- Any person may apply to the Board for a collaborative marketing approval.

28 Board decision

- (1) As soon as practicable after receiving an application, the Board must consider it and decide whether to approve a collaborative marketing arrangement.
- (2) The Board—
 - (a) May before deciding whether to approve the application indicate to the applicant possible changes to the application which, if included, would improve the prospects of the application being approved; and
 - (b) May, in approving an application, impose any reasonable and necessary conditions; and
 - (c) Must, after deciding an application—
 - (i) As soon as practicable, give written notice to the applicant of its decision, including the reasons for its decision in any case where it declines the application; and
 - (ii) If the application has been approved, issue the collaborative marketing approval to the applicant.
- (3) Subclause (1) does not apply if collaborative marketing approvals have already been granted in respect of the volume of kiwifruit set in regulation 26.

29 Effect of Board decision

- ZGL must enter into a contract with the collaborative marketing approval holder consistent with the collaborative marketing approval.

Other matters

30 ZGL's other contractual arrangements

- Subject to any allocation under regulation 26, nothing in this Part affects or limits the ability of ZGL to enter into any contract or arrangement for the purchase and marketing of kiwifruit.

31 Board's procedures and processes

- Subject to any requirements in this Part, the Board may regulate its own procedure in a way that is consistent with the rules of natural justice.

Part 5

Establishment of New Zealand Kiwifruit Board

32 New Zealand Kiwifruit Board

- (1) The New Zealand Kiwifruit Board (known as “Kiwifruit New Zealand”) is established.
- (2) The Board is a body corporate with perpetual succession and a common seal.
- (3) The Board is not a Crown entity for the purposes of the section 7 of the Crown Entities Act 2004.

Subclause (3) was amended, as from 25 January 2005, by section 37(1) Public Finance Amendment Act 2004 (2004 No 113) by substituting the words “section 7 of the Crown Entities Act 2004” for the words “Public Finance Act 1989”.

33 Functions

- (1) The functions of the Board are—
 - (a) To authorise the export of kiwifruit at FOBS, and to set the terms of the authorisation in accordance with Parts 1 and 2:
 - (b) To monitor and enforce—
 - (i) The non-discrimination rule, the non-diversification rule, the information disclosure requirements, and the collaborative marketing requirements; and
 - (ii) The requirement that the point of acquisition of title to kiwifruit purchased for export be in accordance with regulation 5(c); and
 - (iii) Any other terms and conditions of the authorisation:
 - (c) To determine collaborative marketing applications in accordance with Part 4.
- (2) The Board must carry out its function under subclause (1)(b) to best achieve the purpose in regulation 8.

34 Cost-effective requirement

- The Board must perform its functions in a manner that is as efficient and cost-effective as possible.

35 Prohibitions

- The Board must not—
 - (a) Carry on any commercial activity, including the purchase or sale of kiwifruit:
 - (b) Operate to make a profit.

36 Membership

- The Board consists of 5 members of which—
 - (a) 3 members are to be elected by producers in accordance with regulation 37:
 - (b) 1 member is to be appointed by New Zealand Kiwifruit Growers Incorporated or its successor:
 - (c) 1 member is to be appointed by the other members, who is fully independent of the kiwifruit industry and who is to act as the chairperson of the Board.

37 Election of producer representatives

- (1) The producers who are eligible to vote in an election under regulation 36(a) are—
 - (a) The owners of land in New Zealand on which kiwifruit is produced for export sale; or
 - (b) Such other persons determined by the Board to be producers of such kiwifruit.
- (2) The decision as to who is a producer in respect of any particular kiwifruit orchard (whether an owner of land referred to in subclause (1)(a) or any other person referred to in subclause (1)(b)) is for the Board to make.
- (3) The Board, in exercising that discretion, may have regard to—
 - (a) Whether the orchard was developed by a lessee of the land; or

- (b) Whether the landowner or lessee who would otherwise be the producer consents to another person being the producer, in a case where the other person—
 - (i) Has a family association with the landowner or lessee; and
 - (ii) Is engaged in the production of kiwifruit on that land.
- (4) The Board may determine the way in which the election of the members who are to be elected by producers is to be conducted.
- (5) The Board must, however, ensure that the election is held in a way that ensures fairness and that a clear and accurate result can be ascertained and verified.

38 Powers

- The Board has all the powers necessary to enable it to carry out its functions.

39 Funding

- (1) The Board is to be funded on a cost recovery basis by charging—
 - (a) ZGL, in accordance with the export authorisation, for the costs incurred by the Board in administering that authorisation, including monitoring and enforcement under regulation 33(1)(b); and
 - (b) Applicants under the collaborative marketing regime; and
 - (c) ZGL and the applicants for the reasonable costs of the Board's communications with producers.
- (2) Any costs so charged are recoverable as a debt due to the Board in any court of competent jurisdiction.

40 Compliance with Financial Reporting Act 1993

- The Board must comply with the Financial Reporting Act 1993.

41 Further provisions applying to Board

- The provisions set out in the Schedule apply to the Board.

Part 6

Miscellaneous provisions

42 Alteration or review of authorisation

- (1) The Board may alter the authorisation if it is necessary or desirable to do so to ensure the effective enforcement of the authorisation.
- (2) The Board must review the effectiveness of the enforcement regime set out in regulation 7(1)(a) at intervals of no more than 3 years apart and change the authorisation as necessary to ensure the effectiveness of the regime.
- (3) If these regulations are amended in a way that necessitates a change to the export authorisation, the Board must change the authorisation to ensure consistency with the regulations as amended.

43 No contracting out

- These regulations apply despite anything to the contrary in the constitution of ZGL or its subsidiaries.

44 No Crown liability

- (1) The Crown is not liable to ZGL or any other person—
 - (a) In the event that an export authorisation or collaborative marketing arrangement is revoked:

- (b) For any act or omission relating to the export authorisation or the operation of ZGL or of any other person approved under a collaborative marketing arrangement.
- (2) The Crown is not liable in respect of any act or omission by the Board.

45 Notice of international obligations

- (1) The Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade may, at any time, give to ZGL a written notice specifying—
 - (a) A particular international obligation of New Zealand; and
 - (b) An element of the performance of ZGL's functions or the exercise of ZGL's powers to which, in the Minister's opinion, the obligation is relevant.
- (2) ZGL must ensure that its performance or exercise of the element is consistent with the obligation until the notice is revoked.

46 Supply of information

- (1) The Board may from time to time, for the purpose of the administration and enforcement of these regulations, require ZGL to make available to the Board information in its possession or over which it has control.
- (2) ZGL must make that information available promptly to the Board in a form in which it can be readily understood.
- (3) This regulation is not limited by regulation 20(1)(b).

Transitional provisions

47 Preparation for new Board

- (1) The members of the New Zealand Kiwifruit Marketing Board established by the Kiwifruit Marketing Regulations 1977 may take all steps that are reasonably necessary or desirable to prepare for the establishment and operation of the Board under these regulations.
- (2) In particular, those members must arrange for an election to be held in accordance with regulation 37, as soon as practicable, to take account of any expected vacancies on the Board.
- (3) Replacement members are to fill any vacancies on the Board that arise on or after 2 April 2000, and that would otherwise result in the number of members falling below 5, in the following order:
- (a) those members elected under subclause (2), in order of votes cast for those members;
 - (b) the member appointed under regulation 36(b);
 - (c) the member appointed under regulation 36(c).
- (4) The members may appoint 1 of their number to be chairperson until a chairperson is appointed under regulation 36(c).
- (5) No initial member is entitled to compensation for loss of office by reason of the expiry of his or her term of office.
- (6) The Board may consist of up to 8 members until 1 or more replacement members take office under subclause (3).
- (7) The directors of the Board who are also directors of ZGL must not participate in discussions or decisions about the enforcement regime to be specified in ZGL's export authorisation as required under regulation 7(1)(a).

Regulation 47 was substituted and regulation 49 were revoked, as from 3 March 2000, by regulation 3 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

48 ZGL's authorisation in 2-month interim period

- (1) ZGL is deemed to have been granted an interim authorisation to export kiwifruit at FOBS on terms and conditions that are in accordance with these regulations.

- (2) That interim authorisation commences on 1 April 2000 and expires with the close of 31 May 2000.
- (3) The discretionary terms and conditions that are included in the first authorisation granted by the Board are deemed to have been included in that interim authorisation from its commencement.
- (4) The discretionary terms and conditions are those referred to in regulation 7.
- (5) These regulations apply as if the interim authorisation were granted by the Board.

49 Directors in transitional period

- [Revoked]

Regulation 47 was substituted and regulation 49 were revoked, as from 3 March 2000, by regulation 3 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

Schedule Provisions relating to Board

Reg 41

1 Term of office

- (1) Every appointed member of the Board is appointed for a term of up to 3 years.
- (2) Every member of the Board elected by producers is elected for a term of up to 3 years.
- (3) This clause is subject to clause 3.

2 Reappointment

- Every member of the Board is eligible for reappointment or re-election from time to time.

3 Continuation in office after appointed member's term expires

- On expiry of an appointed Board member's term of office, the member continues to hold office, by virtue of the appointment for the term that has expired, until—
 - (a) The member is reappointed; or
 - (b) A successor to the member is appointed.

4 Vacancies

- The powers of the Board are not affected by any vacancy in its membership.

5 Meetings

- (1) Meetings of the Board must be held at such times and places as the Board or its chairperson from time to time appoints.
- (2) The chairperson, or any 2 members, may at any time call a special meeting by giving not less than 7 days' notice of the special meeting, and of the business to be transacted at that meeting, to each member of the Board for the time being in New Zealand.
- (3) No business other than that specified in a notice of special meeting may be transacted at that meeting.
- (4) The quorum at any meeting of the Board is 3 members.
- (5) All questions arising at any meeting of the Board must be decided by a majority of the valid votes recorded on the question.
- (6) A resolution signed, or assented to by letter, facsimile transmission, telex, or other method of communication, by no fewer than 3 members has the same effect as a resolution duly passed at a meeting of the Board.
- (7) Subject to the provisions of these regulations, the Board may regulate its own procedure.

Clause 5(7) was amended, as from 3 March 2000, by substituting the words “these regulations” for the words “this Act” pursuant to regulation 4 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

6 Chairperson

- (1) The chairperson must preside at all Board meetings at which he or she is present.
- (2) If the chairperson is absent, the deputy chairperson must preside.
- (3) If the chairperson and the deputy chairperson are absent, the members present must appoint 1 of their number to be chairperson of that meeting.
- (4) At a Board meeting, the chairperson or other person presiding has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

7 Deputy chairperson

- (1) The Board may from time to time appoint 1 of its members as the deputy chairperson of the Board.
- (2) During any vacancy in the office of chairperson, or in the absence of the chairperson from New Zealand, or while the chairperson is incapacitated by sickness or otherwise, the deputy chairperson has and may exercise all the powers and functions of the chairperson.

8 Acts not to be called into question

- No one may question an appointment of a member of the Board to act as chairperson, or an act done by that member while acting as such, or an act done by the Board while any member is acting as such, in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased.

9 Co-opted members

- (1) The Board may co-opt any person or persons whose qualifications or experience are likely, in the opinion of the Board, to be of assistance to the Board in dealing with any matter before the Board.
- (2) Every person so co-opted is entitled to take part in the proceedings of the Board in relation to that matter, but is not entitled to vote on that matter.

10 Committees

- (1) The Board may from time to time, by resolution, appoint, alter, discharge, continue, or reconstitute any committee to advise the Board on any matters relating to the Board's functions and powers that are referred to that committee by the Board.
- (2) Any person may be appointed to be a member of a committee, whether or not that person is a member of the Board.
- (3) Subject to these regulations, and to any direction given by the Board, every committee may regulate its own procedure.

Clause 10(3) was amended, as from 3 March 2000, by substituting the words "these regulations" for the words "this Act" pursuant to regulation 4 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

11 Delegation of functions and powers

- (1) The Board may from time to time, either generally or specifically, delegate any of the Board's functions and powers to any of its committees, members, or employees.
- (2) However, the Board must not delegate the power of delegation conferred by subclause (1).
- (3) Every delegation must be in writing.
- (4) Any delegation may be made to—
 - (a) A specified person; or
 - (b) A person belonging to a specified class of persons; or
 - (c) The holder for the time being of a specified office or appointment; or
 - (d) The holder for the time being of an office or appointment of a specified class.
- (5) The committee or person to whom any such delegation is made may exercise or perform the delegated functions or powers in the same manner and with the same effect as if they had been conferred directly by these regulations and not by delegation.

(6) Subclause (5) is subject to any general or special directions given or conditions imposed by the Board.

(7) Every committee or person purporting to act pursuant to any delegation under this clause is presumed, in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

(8) Every delegation under this clause is revocable at will, but the revocation does not take effect until it is communicated to the delegate.

(9) A delegation continues in force according to its terms until it is revoked, notwithstanding any change in the membership of the Board or of any committee.

(10) No delegation under this clause prevents the performance or exercise of any function or power by the Board.

Clause 11(5) was amended, as from 3 March 2000, by substituting the words “these regulations” for the words “this Act” pursuant to regulation 4 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

12 Contracts

- (1) Board contracts must be made under the common seal of the Board if the contract is one which, if made by private persons, must be by deed.
- (2) Board contracts may be signed by a member of the Board or employee of the Board on behalf of and by authority of the Board if the contract is one that, if made by private persons, must be signed by the parties to be charged with it.
- (3) Board contracts may be made orally by or on behalf of the Board by any member of the Board or employee of the Board acting by authority of the Board if the contract is one that, if made by private persons, may be made orally, but no oral contract may be made for a sum exceeding \$2,000.
- (4) Failure to make a contract in a manner provided by this clause or clause 13 does not invalidate the contract if it was made pursuant to a resolution of the Board or to give effect to a resolution of the Board in relation to contracts generally or in relation to that particular contract.

13 Attorneys

- (1) The Board may authorise any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand.
- (2) The authorisation must be in writing under the common seal of the Board.
- (3) An instrument executed by such an attorney on behalf of the Board binds the Board and, if executed as a deed, has the same effect as if it were under the common seal of the Board.

14 Employees

- The Board may appoint employees that are necessary for the reasonable performance of its functions.

15 Bank accounts

- (1) The Board may open at any bank, or banks, such accounts as are necessary for the performance of its functions.
- (2) All money received by the Board, or by any member or employee of the Board for the purposes of the Board, must, as soon as practicable after it has been received, be paid into such bank accounts of the Board as the Board from time to time determines.
- (3) The withdrawal or payment of money from any such accounts must be authorised in such manner as the Board thinks fit.
- (4) Any bank account of the Board must be operated only by cheque or other instrument signed by a member or an employee of the Board authorised by the Board to do so, and must be countersigned by another member or employee of the Board authorised to do so.

16 Expenditure not otherwise authorised

- The Board may, in any financial year, expend for lawful purposes not otherwise authorised by these regulations or any other enactment, any sum or sums not amounting in the aggregate to more than \$5,000.

Clause 11(5) was amended, as from 3 March 2000, by substituting the words “these regulations” for the words “this Act” pursuant to regulation 4 Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

17 Seal

- The common seal of the Board must be judicially noticed in all courts and for all purposes.

MARIE SHROFF,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, most of which come into force on 1 April 2000, set out a new regime for the export of kiwifruit from New Zealand.

The principal features of the regime are as follows:

- •Restrictions on the export of kiwifruit (otherwise than for consumption in Australia):
- •An authorisation for Zespri Group to export kiwifruit:
- •Measures to mitigate the potential costs and risks arising from the single desk.

These measures are—

- •A non-discrimination rule preventing Zespri Group from discriminating, otherwise than on commercial grounds, among suppliers of kiwifruit in relation to purchasing decisions or contracts:
- •A non-diversification rule preventing Zespri Group from carrying out activities, or owning or operating assets, that are not necessary for the core business of purchasing and exporting New Zealand-grown kiwifruit, unless the providers of capital agree to the way in which their capital is used:
- •Information disclosure rules:
- •The establishment of a New Zealand Kiwifruit Board to grant the export authorisation to Zespri Group, to monitor and enforce the various rules relating to the single desk, and to determine collaborative marketing applications:
- •Provision for the Board to require Zespri Group to enter into collaborative marketing arrangements for the purpose of increasing the overall wealth of New Zealand kiwifruit suppliers:
- •A requirement for the point of acquisition of title to kiwifruit purchased for export to continue to be at “FOBS”, or a later point in the supply chain.

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