

## Chapter 18:09

PREVIOUS CHAPTER**DAIRY PRODUCE MARKETING AND LEVY ACT**

Acts 27/1961 (Federal), 32/1962 (Federal), 52/1964, 21/1967 (s. 30), 28/1969 (s. 5), 38/1975, 22/1986, 7/1991; R.G.Ns. 879/1963, 214/1964, 1334/1973; S.I. 566/1979.

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#### SCHEDULE: Powers of Board.

AN ACT to establish a Dairy Marketing Board and to define its functions and powers; to provide generally for the regulation of the marketing of dairy produce and for the imposition and collection of levies on certain dairy produce; and to provide for incidental matters.

[Date of commencement: 18th May, 1962.]

#### PART I

#### PRELIMINARY

##### 1 Short title

This Act may be cited as the Dairy Produce Marketing and Levy Act [Chapter 18:09].

##### 2 Interpretation

(1) In this Act—

“Board” means the board of the Dairy Marketing Board referred to in section four;

“butter” means the substance commonly known as butter made exclusively from milk or cream or milk and cream, with or without salt or other preservative and with or without the addition of colouring matter;

“butterfat” means the pure fat of milk but does not include the substance commonly known as ghee;

“cheese” means the substance commonly known as cheese containing no fat other than butterfat;

“class”, in relation to dairy produce, includes grade, quality, standard and type;

“cream” means that part of milk rich in butterfat which has been skimmed from milk;

“dairy industry” means anything and everything connected with the production, manufacture, preparation and marketing of dairy produce;

“Dairy Marketing Board” means the Dairy Marketing Board established by section

three;

“dairy produce” means milk and any milk product;

“dealer” includes any person engaged in the dairy industry and cognate expressions shall be construed by reference, inter alia, to transactions and operations such as are carried out by persons engaged in the dairy industry;

“depot” means a depot appointed, established or maintained by the Board for the receipt or sale of dairy produce;

“ices and flavoured milk products” means—

(a) ice-cream; and

(b) any frozen concoction containing flavourings or fruit juices or dairy produce and flavourings or fruit juices; and

(c) any beverage containing dairy produce and flavourings or fruit juices;

“inspector” means an inspector appointed in terms of subsection (1) of section forty-three and includes a person exercising or performing any of the powers or duties of an inspector conferred or imposed upon him in terms of subsection (2), (3) or (4) of that section;

“levy” means a levy imposed by section thirty-three;

“member” means a member of the Board;

“milk” means cow’s milk in the form in which it comes from the cow;

“milk product” means butter, butterfat, the substance commonly known as ghee, cheese, cream and any other like product of milk, including skimmed milk and milk which has been condensed, dried or evaporated;

“Minister” means the Minister of Agriculture or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“producer” means a producer of milk or a milk product manufactured or prepared by him from milk of which he is the producer;

“producer-retailer” means a producer who sells milk or a milk product by retail;

“producer-wholesaler” means a producer who is not a producer-retailer;

“registered” means registered in terms of section forty and “application for registration” and “registration” shall be construed accordingly;

“sell” includes to—

(a) offer, advertise, keep, expose, transmit, convey or deliver or prepare for sale; and

(b) exchange or dispose of for any valuable consideration; and

(c) transmit, convey or deliver in pursuance of a sale or exchange or disposal referred to in paragraph (b);

“skim” includes separate;

“skim milk” means that part of milk not rich in butterfat which remains after cream has been skimmed.

(2) For the purposes of this Act, a producer who sells milk or a milk product to a person, other than the Dairy Marketing Board or a prescribed dealer or member of a prescribed class of dealers, shall be deemed to have sold the milk or the milk product by retail.

## PART II

### ESTABLISHMENT OF DAIRY MARKETING BOARD

#### 3 Establishment of Board

There is hereby established a board to be known as the Dairy Marketing Board which shall be a body corporate capable of suing and being sued and, subject to this Act, of doing all such acts as a body corporate may by law perform.

#### 4 Board of the Dairy Marketing Board

The operations of the Dairy Marketing Board shall, subject to this Act, be controlled

by a Board, to be known as the Board of the Dairy Marketing Board, appointed in terms of this Part.

#### 5 Membership of Board

(1) The Board shall consist of not less than six and not more than nine members who shall be appointed by the Minister after consultation with the President and in accordance with any directions the President may give him.

(2) Members shall be appointed for their ability and experience in agriculture, business or administration or their suitability otherwise for appointment as members.

(3) The Minister shall designate one member as chairman of the Board and another member as vice-chairman of the Board, and the vice-chairman shall exercise the functions of the chairman during any period when the chairman is unable to do so.

(4) The Minister may appoint any person to the Board as an alternate to a member, and such person—

(a) shall act as a member only when the member to whom he is alternate is unable to exercise his functions on the Board by reason of illness, absence from Zimbabwe, suspension from office or other cause;

(b) when acting as a member shall, subject to the conditions applicable to the member, exercise the functions of the member to whom he is alternate:

Provided that an alternate to the member who has been designated as chairman or vice-chairman of the Board shall not exercise the functions of chairman or vice-chairman, as the case may be.

#### 6 Conditions of office of members

(1) Subject to this Part, a member shall hold office for such period not exceeding three years as the Minister may fix on his appointment.

(2) On the expiry of the period for which a member has been appointed, he shall continue to hold office until he has been reappointed or his successor has been appointed:

Provided that a member shall not continue to hold office in terms of this subsection for a period exceeding six months.

(3) Subject to section fourteen, a member shall hold office on such conditions as the Minister may fix for members generally.

(4) A retiring member shall be eligible for reappointment as a member.

#### 7 Disqualification for appointment as member

The Minister shall not appoint a person as a member and no person shall be qualified to hold office as a member who—

(a) is not a citizen of Zimbabwe ordinarily resident in Zimbabwe; or

(b) is, or is married to a person who is, engaged in any activity connected with a business which, in the opinion of the Minister, is likely to interfere with the impartial discharge by that person of the duties of the office of a member; or

(c) has, in terms of a law in force in any country—

(i) been adjudged or otherwise declared insolvent or bankrupt and has not been rehabilitated or discharged; or

(ii) made an assignment or arrangement or composition with his creditors which has not been rescinded or set aside;

or

(d) has, within the period of five years immediately preceding the date of his proposed appointment, been convicted—

(i) within Zimbabwe on a criminal offence; or

(ii) outside Zimbabwe of an offence, by whatever name called, which, if committed within Zimbabwe, would have been a criminal offence;

and sentenced to a term of imprisonment imposed without the option

of a fine, whether or not such sentence has been suspended, and has not received a free pardon.

#### 8 Vacation of office by member

A member shall vacate his office and his office shall become vacant—

(a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiry of such shorter period as he and the Minister may agree; or

(b) thirty days after the date he is sentenced by a court to imprisonment referred to in paragraph (d) of section seven after conviction of an offence referred to in that paragraph:

Provided that, if, during the said period of thirty days, an application for a free pardon is made or an appeal is noted, the question whether the member is to vacate his office shall not be determined until the final disposal of such application or appeal, whereupon the member shall forthwith vacate his office and his office shall become vacant unless he is granted a free pardon, his conviction is set aside or a punishment other than imprisonment is substituted; or

(c) if he becomes disqualified in terms of paragraph (a), (b) or (c) of section seven to hold office as a member; or

(d) if he is required in terms of section nine to vacate his office.

#### 9 Member may be required to vacate office or be suspended

(1) The Minister may require a member to vacate his office if the member—

(a) has been guilty of improper conduct as a member; or

(b) has failed to comply with the conditions of his office fixed by the Minister in terms of subsection (3) of section six; or

(c) is mentally or physically incapable of efficiently performing his duties as a member.

(2) The Minister, on the recommendation of the Board, may require a member to vacate his office if the Minister is satisfied that the member has been absent without the permission of the Board from three consecutive meetings of the Board, of which he has been given not less than seven days' notice, and that there was no just cause for the member's absence.

(3) The Minister—

(a) may suspend from office a member against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed; and

(b) shall suspend from office a member who has been sentenced by a court to imprisonment without the option of a fine, whether or not suspended, pending determination of the question whether he is to vacate his office; and whilst that member is so suspended he shall not carry out any duties or be entitled to any remuneration as a member.

#### 10 Filling of vacancies on Board

Subject to section five, on the death of or the vacation of office by a member, the Minister may appoint a person to fill the vacancy.

#### 11 Meetings and procedures of Board

(1) The Board shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and proceedings as it thinks fit:

Provided that the Board shall meet at least three times every year.

(2) The chairman of the Board may himself at any time and shall, at the request in writing of not less than four members, convene a special meeting of the Board.

(3) If, at a meeting of the Board, the chairman and the vice-chairman are both absent, the members present may elect one of their number to preside at that meeting as

chairman.

(4) A majority of members shall form a quorum at a meeting of the Board.

(5) All acts, matters or things authorized or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(6) At all meetings of the Board each member present shall have one vote on every question before the Board and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote.

(7) Any proposal circulated among all members and agreed to in writing by a majority of all members shall be of the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that such a proposal be placed before a meeting of the Board, this subsection shall not apply to such proposal.

## 12 Committees of Board

(1) For the better exercise of its functions, the Board may establish committees in which may be vested and on which may be imposed such of the functions of the Board as the Board may direct:

Provided that—

(i) the vesting or imposition of any such functions in a committee shall not divest the Board of such functions, and

(ii) the Board may amend or withdraw any decision of any such committee in the exercise of its functions.

(2) The procedure of any committee of the Board shall be fixed by the Board.

(3) The chairman of the Board may at any time and place convene a meeting of a committee of the Board.

(4) The Board—

(a) shall appoint to that committee at least one member of the Board, who shall be the chairman of the committee;

(b) may appoint to that committee, on such terms and conditions as the Board may fix, persons who are not members of the Board.

## 13 Right of certain officers to attend meetings, etc. of Board and committees

Such officers of the Public Service as the Minister may designate shall be entitled—

(a) to attend meetings of the Board or a committee of the Board; and

(b) to take part in the proceedings of the Board or a committee of the Board;

as if they were members but shall not have a vote on any question before the Board or the committee.

## 14 Remuneration and expenses of members

A member or an alternate member of the Board or a member of a committee of the Board shall be paid from the funds of the Board—

(a) such remuneration, if any, as the Minister, after consultation with the Minister responsible for finance, may fix;

(b) such allowances as the Minister, after consultation with the Minister responsible for finance, may fix to meet any reasonable expenses incurred by him in connection with the business of the Board.

## 15 Members to declare interests

(1) If a member or his spouse—

(a) tenders for or acquires or holds a direct or indirect pecuniary interest in a contract with the Dairy Marketing Board; or

(b) knowingly acquires or holds a direct or indirect pecuniary interest in a company or firm applying or negotiating for a contract with the Dairy Marketing

Board; or

(c) owns immovable property or a right in immovable property or has a direct or indirect pecuniary interest in a company or firm which results in his private interests coming or appearing to come into conflict with his duties as a member; the member shall forthwith disclose the fact to the Board and to the Minister:

Provided that this subsection shall not apply in relation to a contract with the Dairy Marketing Board for the delivery, sale or purchase of any products entered into by a member or his spouse in which the member or his spouse receives no preferential treatment over or more advantageous terms than other members of the public.

(2) A member referred to in subsection (1) shall take no part in the consideration or discussion of or vote on any question before the Board which relates to a contract, right, immovable property or interest referred to in that subsection.

#### 16 Validity of decisions and acts of Board

No decision or act of the Board or act done under the authority of the Board shall be invalid by reason only of the fact that—

(a) the Board consisted of fewer than the number of persons prescribed in section five; or

(b) a disqualified person acted as a member of the Board at the time the decision was taken or the act was done or authorized; if the duly appointed members who were present when the decision was taken or the act was done or authorized by the Board constituted a quorum in terms of subsection (4) of section eleven.

#### 17 Execution of contracts and instruments by Board

An agreement, contract or instrument may be entered into or executed on behalf of the Dairy Marketing Board by any persons generally or specially authorized by the Board for that purpose.

#### 18 Transaction of business of an urgent nature

If it is not practicable to hold a meeting of the Board for the transaction of business of an urgent nature, the chairman, after consulting such of the members as are available in the circumstances, may deal with the business himself and, as soon as practicable thereafter, shall give to the Board full particulars of the nature and extent of the urgency of the business, the circumstances in which the urgency arose and the action taken by him in the matter.

### PART III

#### FINANCIAL PROVISIONS RELATING TO BOARD

#### 19 Conduct of financial affairs of Dairy Marketing Board

It shall be the object of the Dairy Marketing Board so to exercise its functions and conduct its business as to ensure that its revenues, taking one year with another, are not less than sufficient to enable the Dairy Marketing Board to meet the outgoings of the Dairy Marketing Board properly chargeable to revenue account and to make the provision which is required to be made by the Dairy Marketing Board in terms of sections twenty-one and twenty-two.

#### 20 Funds of Dairy Marketing Board

The funds of the Dairy Marketing Board shall consist of—

(a) the proceeds of any levy and such other moneys as may be payable to the Dairy Marketing Board by virtue of this Act; and

(b) such moneys as may be payable to the Dairy Marketing Board from moneys appropriated by Act of Parliament; and

(c) such other moneys or assets as may vest in or accrue to the Dairy Marketing Board whether in the course of its operations or otherwise.

21 Dairy Marketing Board to make certain charges to revenue account, etc.

(1) The Dairy Marketing Board shall charge to its revenue account all charges which in the normal conduct of business are regarded as proper to be made to revenue account and, in so doing, shall make in each financial year proper provision for—

(a) the depreciation of assets; and

(b) the payment of interest on and all other charges and expenses incurred in connection with loans.

(2) In charging to its revenue account all charges which in the normal conduct of business are regarded as proper to be made to revenue account as in subsection (1) is provided, the Dairy Marketing Board may also, with the approval of the Minister responsible for finance, make in each financial year provision for meeting, in whole or in part, increases in the cost of replacing assets.

22 Dairy Marketing Board to make provision for the redemption of loans

(1) The Dairy Marketing Board shall in each financial year make such provision as may be necessary for the redemption of loans.

(2) Moneys put aside by the Dairy Marketing Board in pursuance of subsection (1) shall, until such time as they are used for the redemption of loans, be invested in such manner as the Board with the approval of the Minister, acting on the advice of the Minister responsible for finance, may determine.

23 Meeting of deficiencies

If in any financial year the revenues of the Dairy Marketing Board, together with any surplus revenue brought forward from any preceding financial year, are sufficient to enable the Dairy Marketing Board to meet the outgoings of the Dairy Marketing Board properly chargeable to revenue account and to make the provision which is required to be made by the Dairy Marketing Board in terms of sections twenty-one and twenty-two, the deficiency shall, unless the Minister otherwise directs, be met by the Minister out of moneys appropriated for the purpose by Act of Parliament.

24 Establishment of reserves, funds and accounts

The Dairy Marketing Board may, with the approval of the Minister, establish and administer such reserves, funds and accounts as the Board considers necessary or appropriate for the purposes of the business of the Dairy Marketing Board and may at any time, with the approval of the Minister, abolish any such reserve, fund or account.

25 Accounts of Dairy Marketing Board

(1) The Dairy Marketing Board shall keep proper books of account and other records in relation thereto and to all its operations, undertakings and property and, in addition, such particular accounts and records in respect of all or any of its operations, undertakings and property as the Minister may direct.

(2) The Dairy Marketing Board shall keep separate accounts in relation to any business which the Dairy Marketing Board conducts for the account and at the risk of other persons.

(3) The allocation to each account kept by the Dairy Marketing Board in terms of subsection (2) of the Dairy Marketing Board's transport, handling and storage costs, the charges in respect of which the Dairy Marketing Board is required to make provision in terms of section twenty-one and other like expenses and charges shall be made in such manner as the Board, with the approval of the Minister, may determine.

26 Appointment of auditors and audit of Dairy Marketing Board's accounts

(1) The Board shall, with the approval of the Minister, appoint one or more persons who publicly carry on the profession of auditors, hereinafter referred to as the auditors, to examine and report to the Board and the Minister on the accounts of the Dairy Marketing Board not less than once in each financial year.

(2) In addition to the report referred to in subsection (1), the Minister may require the Board to obtain from the auditors such other reports, statements or explanations in



connection with the operations, undertakings and property of the Dairy Marketing Board as the Minister may consider expedient.

(3) The Board shall produce and lay before the auditors all books and accounts of the Dairy Marketing Board, with all vouchers in support thereof and all books, papers and writing in its possession or control relating thereto.

(4) The auditors shall be entitled at all reasonable times to require from all members and all persons in the employ of the Dairy Marketing Board such information and explanations as may be necessary for the performance of their duties as auditors.

#### 27 Duties of auditors

It shall be the duty of the auditors to certify not less than once in each financial year whether or not—

(a) they have received all the information and explanations which, to the best of their knowledge and belief, were necessary for the performance of their duties as auditors; and

(b) the accounts of the Dairy Marketing Board have been properly kept; and

(c) the accounts of the Dairy Marketing Board present a true and fair view of the financial position of the Dairy Marketing Board according to the information and explanations given and the books and records produced to them; and

(d) the Dairy Marketing Board has complied with the provisions of this Part with which it is its duty to comply and with their requirements as auditors.

#### PART IV

#### FUNCTIONS OF BOARD

#### 28 Functions of Dairy Marketing Board

(1) The functions of the Dairy Marketing Board shall, subject to this Act and any direction given to the Board by the Minister, be to—

(a) buy at the appropriate prescribed prices any butterfat, cream or milk which is delivered by a registered producer-wholesaler of butterfat, cream or milk, as the case may be, to any depot appointed by the Board for the purpose; and

(b) manufacture and prepare milk products; and

(c) market, within and outside Zimbabwe, milk and milk products.

(2) Nothing in paragraph (a) of subsection (1) shall be construed as precluding the Dairy Marketing Board when performing its function referred to in that paragraph from directing a registered producer-wholesaler to deliver his butterfat, cream or milk during such periods and to such depot appointed by the Board for the purpose of the delivery to the Dairy Marketing Board of butterfat, cream or milk, as the case may be, as the Board may specify.

(3) If the Board directs a registered producer-wholesaler to deliver his butterfat, cream or milk to a depot other than the depot appointed by the Board for the purpose of the delivery to the Dairy Marketing Board of butterfat, cream or milk, as the case may be, which is nearest to the place at which he produces milk, the Dairy Marketing Board shall pay to him so much of the reasonable transport costs incurred by him in delivering his butterfat, cream or milk to the depot specified by the Board as exceeds the reasonable transport costs which he would have incurred had he delivered his butterfat, cream or milk to that depot nearest to the place at which he produces milk.

#### 29 Powers of Dairy Marketing Board

(1) Subject to this Act, the Dairy Marketing Board may, with the approval of the Minister, do all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(2) The Minister may approve the exercise by the Dairy Marketing Board of the power to do a thing specified in the Schedule either generally or specially.

### 30 Appointment of general manager

#### (1) The Board—

(a) shall appoint, subject to this Act and on such terms and conditions as the Board thinks fit, a person approved by the Minister to be general manager of the Dairy Marketing Board in whom, subject to the control of the Board, shall be vested the management of the operations, undertakings and property of the Dairy Marketing Board;

(b) may, with the approval of the Minister, assign to the general manager of the Dairy Marketing Board such of the functions of the Board as the Board thinks fit.

(2) Members shall not be eligible to be considered for appointment as general manager of the Dairy Marketing Board.

(3) Without the authority of the Minister, no person shall be appointed as general manager of the Dairy Marketing Board if he is not ordinarily resident in Zimbabwe.

(4) The appointment of the general manager of the Dairy Marketing Board shall be terminated if he would be required in terms of paragraph (b) or (c) of section eight to vacate his office had that section and paragraphs (b) and (c) of section seven applied to him.

(5) Any assignment of functions in terms of paragraph (b) of subsection (1)—

(a) may be made either generally or specially and subject to such restrictions, reservations and exceptions as the Board may determine;

(b) may be revoked by the Board at any time;

(c) shall not preclude the exercise of the functions by the Board itself.

(6) The general manager of the Dairy Marketing Board shall have the right to attend meetings and take part in the proceedings of the Board as if he were a member but shall not have a vote on any question before the Board.

### 31 By-laws of Board

The Board may, with the approval of the Minister, make by-laws for—

(a) the good management and conduct of the operations, undertakings and property of the Dairy Marketing Board; and

(b) the conditions of service of persons in the Dairy Marketing Board's employ;

and any other matter in the opinion of the Board necessary or convenient to be provided in connection therewith.

### 32 Reports of Board

In addition to the annual reports which the Dairy Marketing Board is required to submit to the Minister in terms of section 44 of the Audit and Exchequer Act [Chapter 22:03], the Dairy Marketing Board—

(a) may submit to the Minister such other reports as the Board may consider advisable; and

(b) shall submit to the Minister such other reports as the Minister may require;

in regard to the operations, undertakings and property of the Dairy Marketing Board.

## PART V

## IMPOSITION OF LEVIES ON DAIRY PRODUCE

### 33 Imposition of levies

(1) There shall, subject to this Act, be a levy or levies at such rate or rates, not exceeding in the case of milk delivered to the Dairy Marketing Board a rate of nought comma one eight cent per kilogram, as the Minister may prescribe on such dairy produce produced, manufactured or prepared in Zimbabwe as the Minister may determine.

(2) No levy shall be payable on dairy produce which is produced, manufactured or prepared by a producer and consumed by him, members of his household or his employees.

34 Payment, collection and remittal of levy

(1) The Minister shall prescribe—

- (a) the persons who shall be responsible for the payment of a levy; and
- (b) the persons who shall be responsible for the collection and remittal of a levy; and
- (c) the manner and times at which a levy shall be paid, collected and remitted.

(2) A levy shall be remitted to the Dairy Marketing Board.

35 Minister may make different provision in respect of different classes of dairy produce

(1) In prescribing the persons, the rate of a levy and other matters which by this Part are required or permitted to be prescribed the Minister may—

- (a) make different provision in respect of different classes of dairy produce and different areas in which dairy produce is produced, manufactured, prepared, sold or dealt in; and
- (b) make no provision in respect of particular classes of dairy produce; and
- (c) make different provision in respect of different classes of persons prescribed for the purposes of section thirty-four; and
- (d) provide that a levy may be paid, collected or remitted by different methods or at different times; and
- (e) provide for exemptions from a levy.

(2) In prescribing classes of dairy produce for the purposes of this Part the Minister may have regard, amongst other things, to the purposes for which or the manner or areas in which or the persons by whom dairy produce is produced, manufactured, prepared, sold or dealt in.

36 Withdrawal or suspension of levy

The Minister may by regulation—

- (a) withdraw a levy; or
- (b) suspend a levy in whole or in part.

37 Summary judgment for levy in criminal proceedings

(1) On the conviction of a person for an offence of failing or refusing to pay a levy or to collect or remit a levy to the Dairy Marketing Board in terms of this Act the court convicting the accused may, on the application of the prosecutor and in addition to any penalty which it may impose, give summary judgment against the accused in favour of the Dairy Marketing Board for the amount of the levy to which the offence relates.

(2) A judgment given by a court in terms of subsection (1) shall have the same effect and may be executed in the same manner as if the judgment had been given in civil proceedings instituted in the court.

38 Recovery of levy

The Dairy Marketing Board may, by civil proceedings in a competent court, recover the amount of a levy which is due in terms of this Act from a person required in terms of this Act to pay the levy or to collect and remit the levy to the Dairy Marketing Board.

PART VI

MARKETING OF DAIRY PRODUCE

39 Restriction on sale of certain dairy products

(1) No person who is not a registered producer-retailer shall sell within a prescribed area cream, milk or skim milk which has not been acquired from or is not the property of the Dairy Marketing Board:

Provided that this subsection shall not apply to—

(a) the sale of cream which has been sterilized and placed in hermetically sealed containers; or

(b) the sale of cream, milk or skim milk by or to the Dairy Marketing Board or a prescribed dealer or member of a prescribed class of dealers.

(2) No producer shall sell milk or a milk product unless—

(a) he is a registered producer-wholesaler of milk or, as the case may be, the milk product; or

(b) he is a registered producer-retailer:

Provided that this subsection shall not apply to a prescribed producer or a member of a prescribed class of producers.

(3) No producer shall sell milk or a milk product by retail unless he is a registered producer-retailer:

Provided that this subsection shall not apply to a prescribed producer or a member of a prescribed class of producers.

(4) No registered person shall sell—

(a) milk or a milk product otherwise than in accordance with the conditions imposed upon him on registration; or

(b) milk of which he is not the producer:

Provided that a registered producer-retailer may with the consent of the Dairy Marketing Board sell milk acquired by him from the Dairy Marketing Board; or

(c) a milk product which has not been manufactured or prepared by him from milk of which he is the producer:

Provided that a registered person who is the holder of a retailer's or general dealer's or trading licence issued in terms of any enactment may sell—

(a) cream such as is referred to in paragraph (a) of the proviso to subsection (1) and condensed, dried and evaporated milk; and

(b) any other milk product which has been imported into Zimbabwe or has been acquired from or is the property of the Dairy Marketing Board.

40 Registration, etc., of producer-wholesalers and producer-retailers

(1) An application for registration as a producer-wholesaler of milk or a milk product or as a producer-retailer shall be made to the Board within the time prescribed.

(2) An applicant for registration shall state in his application—

(a) the address of the place at which he produces milk; and

(b) whether he wishes to be registered as a producer-wholesaler of milk or milk products or milk and milk products or as a producer-retailer; and

(c) if he wishes to be registered as a producer-wholesaler of milk products, the milk products in respect of which he wishes to be registered; and

(d) if he wishes to be registered as a producer-retailer—

(i) whether he wishes to sell milk or milk products or milk and milk products; and

(ii) the milk products, if any, he wishes to sell; and

(iii) the area within which he proposes to sell milk or milk products or milk and milk products;

and

(e) whether or not he is or his premises are registered in terms of any other enactment relating to dairy produce; and

(f) such other particulars as may be prescribed.

(3) The Board may refuse to register an applicant for registration as a producer-retailer if the registration of the applicant would not, in the opinion of the Board, be conducive to the orderly and efficient marketing of the dairy produce in respect of which application for registration is made.

(4) The Board may register an applicant for registration subject to such reasonable conditions as the Board may consider expedient to impose.

(5) The Board may, with the consent or on the application of a registered person, vary the conditions subject to which the registered person was registered by the Board in terms of subsection (4).

(6) The Board shall cancel the registration of a registered person if the registered person applies to the Board for the cancellation of his registration.

(7) An applicant for registration whose application is refused by the Board in terms of subsection (3) or a registered person who is aggrieved by a condition imposed upon him on registration shall have a right of appeal to the Minister.

(8) The registration of a person in terms of this Act shall not have the effect of exempting him from any liability to register in terms of any other enactment relating to dairy produce.

#### 41 Disposal of dairy produce rejected by Dairy Marketing Board

(1) The Dairy Marketing Board may refuse to buy butterfat, cream or milk delivered to a depot by a registered producer-wholesaler which does not conform with the standard of quality, if any, fixed in relation to the appropriate prescribed price for butterfat, cream or milk or the lowest standard of quality fixed in relation to the appropriate prescribed price for any class of butterfat, cream or milk, as the case may be.

(2) If the Dairy Marketing Board refuses to buy butterfat, cream or milk referred to in subsection (1), the Dairy Marketing Board shall—

(a) immediately advise the registered producer-wholesaler by whom the butterfat, cream or milk was delivered that the Dairy Marketing Board has rejected the butterfat, cream or milk; and

(b) issue to the registered producer-wholesaler referred to in paragraph (a) a certificate of rejection stating the Dairy Marketing Board's reasons for rejecting the butterfat, cream or milk.

(3) Unless a registered producer-wholesaler by whom butterfat, cream or milk is delivered to the Dairy Marketing Board otherwise directs before or at the time of delivery, the Dairy Marketing Board may—

(a) make use of any of the butterfat, cream or milk of the registered producer-wholesaler which is rejected by the Dairy Marketing Board for the benefit of the registered producer-wholesaler; or

(b) return any butterfat, cream or milk of the registered producer-wholesaler which is rejected by the Dairy Marketing Board to the registered producer-wholesaler at his expense; or

(c) destroy any butterfat, cream or milk of the registered producer-wholesaler which is rejected by the Dairy Marketing Board without paying him compensation.

(4) The Dairy Marketing Board shall issue a receipt for all butterfat, cream or milk delivered to the Dairy Marketing Board by a registered producer-wholesaler which the Dairy Marketing Board does not reject.

(5) The risk in any butterfat, cream or milk delivered to the Dairy Marketing Board by a registered producer-wholesaler shall not pass to the Dairy Marketing Board until issue of the Dairy Marketing Board's receipt.

#### PART VII

## GENERAL

### 42 Proceedings on failure of Board to comply with Act

(1) If at any time it appears to the Minister that the Dairy Marketing Board has failed to comply with this Act or a direction given to the Board in terms of this Act, he may, by notice in writing, require the Board to make good the default within a specified time.

(2) If the Board fails to comply with a notice referred to in subsection (1), the Minister may apply to the High Court for an order compelling the Board to remedy the default and the High Court may make such order on the application as it thinks fit.

### 43 Appointment of inspectors

(1) Subject to the law relating to the Public Service, the Minister may for the purpose of this Act appoint persons as inspectors.

(2) The Minister may confer all or any of the powers and impose all or any of the duties of an inspector under this Act upon any police officer or class of police officers.

(3) With the consent of a local authority, the Minister may confer all or any of the powers and impose all or any of the duties of an inspector under this Act upon any person or class of persons in the employ of the local authority.

(4) With the consent of the Board, the Minister may confer all or any of the powers and impose all or any of the duties of an inspector under this Act upon any person or class of persons in the employ of the Dairy Marketing Board.

### 44 Offences

(1) A person who—

(a) obstructs an inspector in the performance of his functions conferred by or in terms of a provision of regulations or on being required to do so does not produce to an inspector or a police officer for inspection dairy produce or any books or records relating thereto which are in his possession or under his control; or

(b) fails or refuses to furnish a return or to supply information in the manner and in the time prescribed or furnishes a false or incomplete return or supplies false or incomplete information; or

(c) contravenes a provision of this Act or with an order or direction made or given thereunder with which it is his duty to comply; or

(d) does an act contrary to a condition imposed upon him on registration; shall be guilty of an offence and liable—

(i) on first conviction, to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment; and

(ii) on a second or a subsequent conviction, to a fine not exceeding two hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) If a registered person is convicted of an offence in terms of this Act, the court convicting him may, on the application of the Board and in addition or as an alternative to any other penalty it may impose, order the cancellation of his registration for the whole or such part of the current period of registration prescribed in terms of section forty-five as the court may think fit.

### 45 Regulatory powers of Minister

(1) The Minister may by regulation prescribe all matters which by this Act are required or are permitted to be prescribed or which in his opinion are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The Minister may, in the exercise of the powers conferred upon him by subsection (1), provide for—

(a) the books and records to be kept and the returns and information to be furnished to the Board by registered persons and dealers;

(b) the form in which and the period within which the returns referred to in paragraph (a) shall be furnished;

(c) the information to be contained in returns referred to in paragraph (a) and the information and documents to be supplied in connection with applications for registration;

(d) the hearing and determination of appeals to the Minister for which provision is made in this Act and the making, return and forfeiture of deposits and the procedure to be followed in connection therewith;

(e) the inspection by inspectors of dairy produce and premises where dairy produce is produced, manufactured, handled, graded, treated, processed, prepared, sold, stored or dealt in;

(f) the seizure by an inspector, who shall issue a receipt therefor, of books and documents and dairy produce which, in the opinion of the inspector, may afford evidence of a contravention of the provisions of this Act and the doing of such other things as may appear to the inspector to be necessary for ascertaining whether compliance has been made with the provisions of this Act;

(g) the prescribing, whether by reference to the amounts delivered to the Dairy Marketing Board during any fixed period and the amounts used by the Dairy Marketing Board during any fixed period for different purposes or one or other of those factors, retrospectively or otherwise, of maximum, minimum or specified prices which shall be paid by the Dairy Marketing Board for butterfat, cream or milk delivered to the Dairy Marketing Board by registered producer-wholesalers in accordance with this Act and the directions of the Dairy Marketing Board;

(h) the prescribing of maximum, minimum or specified prices—

(i) at which prescribed classes of dairy produce imported into or produced, manufactured or prepared in Zimbabwe shall be sold; and

(ii) which shall be paid for prescribed classes of dairy produce produced, manufactured or prepared in Zimbabwe;

(i) the prescribing of the periods during which persons who are registered in terms of section twenty-nine shall, subject to the provisions of that section, remain registered and of matters ancillary or incidental thereto.

(3) Nothing in this section shall be construed as precluding the Board from buying—

(a) butterfat, cream or milk or other dairy produce otherwise than at a depot referred to in paragraph (a) of subsection (1) of section seventeen; or

(b) butterfat, cream or milk delivered to a depot referred to in paragraph (a) of subsection (1) of section forty by a person who is not a registered producer-wholesaler;

at such prices as the Board may consider expedient.

#### 46 Information to be confidential

No information contained in any contract entered into by the Dairy Marketing Board in the exercise of the functions of the Dairy Marketing Board or in any return furnished to the Dairy Marketing Board shall, unless it is ordered to be disclosed by order of a competent court, be disclosed to any person, other than the Minister or an officer of the Dairy Marketing Board or the Ministry responsible for agriculture, without the permission of the Minister.

#### 47 Minister may give directions on matters of policy

(1) Subject to subsection (2), the Minister may give to the Board such directions of a general character as to the policy to be observed in the exercise by it of its functions, as appear to the Minister to be requisite in the national interest.

(2) Where the Minister considers that it might be desirable to give any direction in terms of subsection (1), he shall inform the Board, in writing, of his proposal and the Board shall, within thirty days or such further period as the Minister may allow, submit to the Minister, in writing its views on the proposal and the possible implications on the finances and other resources of the Dairy Marketing Board.

(3) The Board shall, with all due expedition, comply with any direction given to it in terms of subsection (1).

(4) When any direction has been given in terms of subsection (1), the Board shall ensure that the direction and any views it has expressed thereon in terms of subsection (2) are set out in its annual report.

#### SCHEDULE (Section 29)

##### POWERS OF BOARD

1. To acquire, establish and construct dairies, creameries, factories and other works within Zimbabwe and to provide, maintain and operate distributing, handling and processing facilities and depots within or outside Zimbabwe necessary or convenient for or ancillary to the exercise of the functions of the Board and for that purpose to buy, take on lease or in exchange, hire or otherwise acquire immovable property and interests therein and rights over the same and concessions, grants, rights, powers and privileges in relation thereto.

2. To buy, take in exchange, hire or otherwise acquire movable property, including vehicles, machinery, plant and other apparatus, necessary or convenient for or ancillary to the exercise of the functions of the Dairy Marketing Board.

3. To maintain, alter and improve property acquired by the Dairy Marketing Board.

4. To apply for, buy or otherwise acquire patents, licences, concessions or the like conferring an exclusive or non-exclusive or limited right to use information or a process which may seem to the Board capable of being used for the purposes of the Dairy Marketing Board or the acquisition of which may seem to the Board calculated, directly or indirectly, to benefit the Dairy Marketing Board, and to use, exercise, develop and grant licences in respect of or otherwise turn to account rights, information and processes so acquired.

5. To carry out or enter into contracts for carrying out any work in connection with the production, handling, grading, treatment, processing, preparation, manufacture, purchase or sale, storage, import or export of dairy produce, ices and flavoured milk products and fruit juices.

6. To carry on the business of manufacturers of and dealers in ices and flavoured milk products and fruit juices.

7. To buy or otherwise acquire such quantities of dairy produce and fruit juices for sale or for storage or for such other purposes as the Board may think desirable and sell and otherwise dispose of such dairy produce and fruit juices as and when the Board thinks fit and, generally, to carry on the business of dealers in dairy produce and fruit juices and, in so doing, to act as agents for the sale of dairy produce, fruit juices and margarine.

8. To make rules regulating the terms and conditions of delivery to the Dairy Marketing Board and of the sale and disposal by the Dairy Marketing Board of dairy produce and ices and flavoured milk products and fruit juices.

9. To make rules in relation to the receipt, handling, treatment, storage and dispatch of dairy produce and ices and flavoured milk products and fruit juices by the Dairy Marketing Board's agents.

10. To carry on the business of importers and exporters of dairy produce and ices and flavoured milk products and fruit juices.



11. To enter into, renew, cancel or abandon arrangements with any government or authority, local or otherwise, that may seem conducive to the Board's objects or any of them, and to obtain from such a government or authority rights, privileges and concessions which the Board may think it desirable to obtain, and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.

12. To sell, exchange, lease, mortgage, pledge, dispose of, turn to account or otherwise deal with any assets of the Dairy Marketing Board or any part thereof which are not required for the purposes of the Dairy Marketing Board for such consideration as the Board may determine.

13. To draw, make, accept, endorse, discount, execute and issue for the purposes of the business of the Board promissory notes, bills of exchange, bills of lading, securities and other negotiable and transferable instruments.

14. To insure against losses, damages, risks and liabilities which the Dairy Marketing Board may incur.

15. To make contracts and to enter into suretyships or give guarantees in connection with the exercise of the functions of the Dairy Marketing Board and to modify or rescind such contracts and to modify or rescind such suretyships or guarantees.

16. Subject to the Audit and Exchequer Act [Chapter 22:03], to raise moneys, temporarily or otherwise, by such means and for such purposes as the Minister may approve.

17. To pledge as security for a loan any milk or milk products acquired or produced by the Dairy Marketing Board and mortgage any other property of the Dairy Marketing Board, whether movable or immovable.

18. Subject to the Audit and Exchequer Act [Chapter 22:03]—

(a) to invest moneys of the Dairy Marketing Board not immediately required by the Dairy Marketing Board in such manner as the Board, with the approval of the Minister, acting on the advice of the Minister responsible for finance, may determine and to vary or realize investments so made; and

(b) to acquire, hold and dispose of shares in central co-operative agricultural companies in Zimbabwe and co-operative organizations outside Zimbabwe engaged in the handling or marketing of dairy produce and the acquisition and disposal of equipment used for those purposes.

19. To pay to members of a committee of the Board who are not members of the Board and to persons in the Dairy Marketing Board's employ such remuneration and allowances and to grant such leave of absence and make such gifts, bonuses and the like to persons in the Dairy Marketing Board's employ as the Board may consider fit.

20. To provide pecuniary benefits for persons in the Dairy Marketing Board's employ on their retirement, resignation, discharge or other termination of service or in the event of their sickness or injury and for their dependants, and for that purpose to effect policies of insurance, establish pension or provident funds or make such other provision as may be necessary to secure for persons in the Dairy Marketing Board's employ and their dependants any or all of the pecuniary benefits to which the provisions of this paragraph relate.

21. To purchase, take on lease or in exchange or otherwise acquire dwelling-houses for occupation by persons in the Dairy Marketing Board's employ.

22. To guarantee loans made to employees of the Dairy Marketing Board for the purchase of dwellings or for the construction of dwellings on land which is the property of employees of the Dairy Marketing Board or their spouses, subject to such

terms and conditions as the Board, with the approval of the Minister responsible for finance, may determine.

23. To purchase land and construct thereon dwelling-houses for occupation by persons in the Dairy Marketing Board's employ.

24. To sell or lease dwelling-houses and land for residential purposes to persons in the Dairy Marketing Board's employ.

25. To make loans to persons in the Dairy Marketing Boards' employ for the purpose of purchasing vehicles, tools or other equipment to be used by those persons in carrying out their duties.

26. To do anything for the purpose of improving—

(a) the skill, knowledge or usefulness of persons in the Dairy Marketing Board's employ; or

(b) the efficiency of the equipment of the Dairy Marketing Board or the manner in which the equipment is operated;

and in that connection to provide or assist other persons in providing facilities for training, education and research.

27. To introduce, develop and give effect to measures for—

(a) the improvement of, and the promotion of quality in, the production of dairy produce in Zimbabwe such as the giving of prizes for specific or general competition in connection with the production, manufacture or preparation of dairy produce, the granting of money for the purposes of improving the quality of dairy livestock and the making of loans to registered persons for the purchase of equipment facilitating the production or handling of dairy produce; and

(b) the encouragement of the consumption of dairy produce within and outside Zimbabwe.

28. To embark upon dairy research, to investigate problems affecting the dairy industry and to conduct experimental work for the purpose of improving the quality of dairy produce produced, manufactured or prepared in Zimbabwe and for that purpose to purchase, maintain and operate experimental equipment.

29. Subject to the concurrence of the Minister responsible for finance, to grant such scholarships or bursaries as the Board considers to be in the interests of the dairy industry on such terms and conditions as may be fixed by the Board in each particular case.

30. Generally, to do all such things as are incidental or conducive to the exercise of the functions of the Dairy Marketing Board or incidental to the powers specified in this Schedule or which are calculated directly or indirectly to enhance the value of or develop the operations, undertakings and property of the Dairy Marketing Board.

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