



## Kiwifruit Export Amendment Regulations 2017

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 10th day of July 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 26 of the Kiwifruit Industry Restructuring Act 1999—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister.

### Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	3
4 Regulation 2 amended (Interpretation)	3
5 Regulation 2A replaced (Provisions affecting application of amendments to these regulations)	3
2A Transitional, savings, and related provisions	4
6 Regulation 7 amended (Discretionary requirements of authorisation)	4
7 Regulation 8 amended (Purpose of Part)	4
8 New regulation 10A and cross-heading inserted	4
<i>Prior notice rule</i>	
10A ZGL must inform Board before carrying out activities that support core business	4

9	Regulation 11 replaced (Non-diversification rule)	5
	11 Non-diversification rule	5
10	Regulation 22 replaced (Continuing requirements as to ZGL Limited's corporate form)	6
	22 Requirements as to ZGL's corporate form	6
11	Regulation 23 amended (Contents of constitution)	6
12	New regulation 23A and cross-heading inserted	6
	<i>Resolutions for certain alterations</i>	
	23A Additional resolution procedure required for certain alterations to constitution	7
13	Regulation 24 amended (Purpose of Part)	7
14	Regulation 33 amended (Functions)	7
15	New regulations 33A to 33C inserted	7
	33A Statements of intent	7
	33B Preparation of statement of intent	8
	33C Amendments to statement of intent	9
16	Regulation 34 revoked (Cost-effective requirement)	9
17	Regulation 36 replaced (Membership)	9
	36 Appointment of Board members	9
	36A Vacation of and removal from office	10
18	Regulation 37 amended (Election of producer representatives)	10
19	Regulation 39 amended (Funding)	10
20	Regulation 40 replaced (Compliance with Financial Reporting Act 1993)	11
	40 Financial statements must be prepared, audited, and publicly disclosed	11
	40A Board must provide certain information to Ministry	11
21	Regulations 47 to 49 revoked	12
22	Schedule 1 amended	12
23	Schedule 2 amended	12
	<b>Schedule</b>	13
	<b>New Part 2 inserted into Schedule 1</b>	

## Regulations

### 1 Title

These regulations are the Kiwifruit Export Amendment Regulations 2017.

### 2 Commencement

These regulations come into force on 1 August 2017.

### 3 Principal regulations

These regulations amend the Kiwifruit Export Regulations 1999 (the **principal regulations**).

### 4 Regulation 2 amended (Interpretation)

- (1) In regulation 2, definition of **core business**, after paragraph (a), insert:

(ab) includes the following activities:

- (i) the marketing of New Zealand-grown kiwifruit; and
- (ii) market development for New Zealand-grown kiwifruit; and
- (iii) research and development relating to kiwifruit:

- (2) In regulation 2, definition of **publicly disclose**, before paragraph (a), insert:

(aa) by making that information available, free of charge, on an Internet site that is—

- (i) maintained by or on behalf of ZGL or the Board (as the case may be); and
- (ii) publicly accessible at all reasonable times; and

- (3) In regulation 2, insert in their appropriate alphabetical order:

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

**prior notice rule** means the rule in regulation 10A

**producer** means any of the following:

- (a) an owner of land in New Zealand on which kiwifruit is produced for supply to ZGL;
- (b) a lessee under a lease of at least 1 year's duration of land in New Zealand on which kiwifruit is produced for supply to ZGL;
- (c) a person determined by ZGL to be a producer for the purpose of tradeability of shares

- (4) In regulation 2, replace the definition of **ZGL** with:

**ZGL**,—

- (a) in regulations 22 to 23A, means the company incorporated under the Companies Act 1993 as at 1 April 2000 with the name Zespri Group Limited; and
- (b) in the rest of these regulations, means that company and its subsidiaries

### 5 Regulation 2A replaced (Provisions affecting application of amendments to these regulations)

Replace regulation 2A with:

**2A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

**6 Regulation 7 amended (Discretionary requirements of authorisation)**

- (1) In regulation 7(1)(c)(ii), replace “producers; but” with “producers; and”.
- (2) Replace regulation 7(1)(c)(iii) with:
  - (iii) the reasonable costs incurred by the Board in considering applications for collaborative marketing arrangements; but
  - (iv) no other fees:

**7 Regulation 8 amended (Purpose of Part)**

- (1) Replace regulation 8(a) with:
  - (a) encouraging innovation in the kiwifruit industry while managing risks associated with activities that are not the core business; and
- (2) In regulation 8(c), after “for”, insert “producers and”.

**8 New regulation 10A and cross-heading inserted**

After regulation 10, insert:

*Prior notice rule*

**10A ZGL must inform Board before carrying out activities that support core business**

- (1) ZGL must inform the Board before carrying out any activities that are not the core business but do support the core business.
- (2) For the purposes of this regulation and regulation 11, an activity **supports the core business** if—
  - (a) the activity is likely to enhance the performance of the core business; and
  - (b) the activity poses no more than a low risk (if any) to the interests of producers.
- (3) A consideration of the nature of any risk under subclause (2)(b) must—
  - (a) first take into account any measures that ZGL has put in place to mitigate the effects of any risk event; and
  - (b) then consider—
    - (i) the likelihood of a risk event occurring; and
    - (ii) the impact on the interests of producers if a risk event occurred.
- (4) In subclause (3), **risk event** means an event identified as a risk to the interests of producers that is posed by the activity.

- (5) In this regulation and regulation 11,—  
**activity** includes, without limitation, the ownership or operation of an asset  
**risk** means foreseeable risk.
- (6) This regulation and regulation 11 do not apply to—
- (a) 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; and
  - (b) sales of New Zealand-grown kiwifruit in Australia.

## 9 Regulation 11 replaced (Non-diversification rule)

Replace regulation 11 with:

### 11 Non-diversification rule

- (1) ZGL must not carry out any activities that are not the core business and do not support the core business unless—
- (a) ZGL has carried out a process in which all producers have been—
    - (i) informed of the proposed activities; and
    - (ii) asked to agree by vote to ZGL carrying out the proposed activities; and
  - (b) the following results were obtained from the process:
    - (i) at least 75% of the producers voting on the question agree; and
    - (ii) the production of the producers (who agreed in the voting) was, on average, at least 75% of the kiwifruit supplied to ZGL over the previous 2 consecutive seasons by all producers who voted on the question; and
  - (c) ZGL has minimised, as far as is reasonably practicable, the risks (arising from carrying out the proposed activities) for the producers who have not agreed (whether or not those producers voted).
- (2) For the purposes of the voting referred to in subclause (1)(a)(ii), each producer is entitled to 1 vote per producer entity (for example, a partnership with 10 partners is entitled to 1 vote).
- (3) For the purposes of subclause (1)(b)(ii), the production of producers who voted must be calculated in accordance with the following:
- (a) kiwifruit that is produced is calculated in kilograms;
  - (b) each kilogram of kiwifruit is only counted once;
  - (c) if the land on which the kiwifruit is produced is under a lease of at least 1 year's duration, the kiwifruit produced on that land is counted as being from the producer who owns the land unless, before the voting under subclause (1), the producer allocates the production to the lessee.

(4) *See* regulation 10A.

**10 Regulation 22 replaced (Continuing requirements as to ZGL Limited's corporate form)**

Replace regulation 22 with:

**22 Requirements as to ZGL's corporate form**

- (1) ZGL—
- (a) must remain a company registered only under the Companies Act 1993:
  - (b) must not have voting shares other than ones that are fully tradeable (not based on any supply criteria) at least among producers.
- (2) ZGL may determine that a person who is not a producer within the meaning of paragraph (a) or (b) of the definition of producer in regulation 2 is a producer for the purpose of tradeability of shares.
- (3) ZGL's constitution may not be altered to include rules about maximum shareholding unless—
- (a) the rules are based on the amount of kiwifruit supplied to ZGL; and
  - (b) the rules apply only to producers.
- (4) To avoid doubt, any rules about maximum shareholding permitted by subclause (3) may relate to holding or acquiring shares.
- (5) This regulation does not prevent ZGL from having shares with voting rights based on supply criteria under regulation 23(1)(a).

**11 Regulation 23 amended (Contents of constitution)**

Replace regulation 23(1)(a) and (b) with:

- (a) the rights in section 36(1)(a) of the Companies Act 1993 may be negated or altered by ZGL's constitution only for the purpose of limiting shareholder's voting rights based on supply of kiwifruit to ZGL:
- (b) the rights in section 36(1)(b) of the Companies Act 1993 may be negated or altered by ZGL's constitution only to the extent that they apply to shareholders who are not producers:
- (c) the rights in section 36(1)(c) of the Companies Act 1993 may not be negated or altered by ZGL's constitution.

**12 New regulation 23A and cross-heading inserted**

After regulation 23, insert:

*Resolutions for certain alterations*

**23A Additional resolution procedure required for certain alterations to constitution**

- (1) An alteration permitted by regulation 22(3) or 23(1)(b) must not be made to ZGL's constitution unless the requirements of this regulation are complied with in addition to the requirements of the Companies Act 1993.
- (2) The proposed alteration must be the subject of a resolution procedure in which—
  - (a) all shareholders are entitled to vote on the question; and
  - (b) each share entitles the shareholder to 1 vote on the question.
- (3) Before the resolution procedure is carried out, ZGL must have in place arrangements that give a shareholder who is entitled to vote under subclause (2) the same entitlement as that conferred on a shareholder by section 118 of the Companies Act 1993.
- (4) The proposed alteration must—
  - (a) be approved, as if it were an alteration to which section 32 of the Companies Act 1993 applied, by a resolution of a majority of 75% of the votes of all shareholders who are entitled to vote under subclause (2) and are voting on the question; and
  - (b) be approved, as if it were an alteration to which section 117 of the Companies Act 1993 applied, by a resolution of each interest group that is passed by a majority of 75% of the votes of all shareholders in the interest group who are entitled to vote under subclause (2) and are voting on the question.

**13 Regulation 24 amended (Purpose of Part)**

In regulation 24, replace “suppliers” with “producers”.

**14 Regulation 33 amended (Functions)**

- (1) In regulation 33(1)(b)(i), after “non-discrimination rule,”, insert “the prior notice rule,”.
- (2) After regulation 33(1)(c), insert:
  - (d) to act in accordance with its statement of intent.

**15 New regulations 33A to 33C inserted**

After regulation 33, insert:

**33A Statements of intent**

- (1) The Board must, once in every 3-year period, prepare a statement of intent for the Board that relates to the next 3-year period.

- (2) The statement of intent must be prepared in accordance with this regulation and regulation 33B.
- (3) The statement of intent must, for the 3-year period to which it relates,—
  - (a) set out the objectives that the Board intends to achieve or contribute to; and
  - (b) explain the nature and scope of the Board’s functions and intended operations; and
  - (c) explain how the Board intends to manage its functions and operations to meet its objectives; and
  - (d) explain how the Board proposes to manage its organisational health and capability; and
  - (e) explain how the Board intends to assess its performance; and
  - (f) set out and explain any other matters that are reasonably necessary to achieve an understanding of the Board’s intentions and capability.
- (4) The Board may include in the statement of intent information that is not required by subclause (3) so long as the information can be identified separately.
- (5) A statement of intent is in force—
  - (a) from the first day of the first financial year to which it relates; and
  - (b) until the close of the final day of the last financial year to which it relates.
- (6) In this regulation and regulation 33B, **3-year period** means 3 consecutive financial years.
- (7) The first statement of intent must relate to the period set out in clause 7 of Schedule 1.

### **33B Preparation of statement of intent**

- (1) On or before 1 February of the last financial year to which the current statement of intent relates, the Board must provide a draft of the statement of intent for the next 3-year period to the Minister for comment.
- (2) The Board must—
  - (a) provide, in accordance with subclause (3), the final statement of intent to the Minister before the commencement of the first financial year to which it relates; and
  - (b) publicly disclose the statement of intent (as soon as practicable after providing the statement of intent to the Minister).
- (3) The statement of intent must be in writing and be dated and signed on behalf of the Board by at least 2 members of the Board.
- (4) The first statement of intent must comply with clause 7 of Schedule 1.

**33C Amendments to statement of intent**

- (1) The Board must amend the statement of intent as soon as practicable after the Board becomes aware that—
  - (a) the statement of intent contains information that is false or misleading in a material particular; or
  - (b) the intentions and undertakings of the statement of intent are significantly altered by any change to the law or to the Board's operating environment.
- (2) The Board must provide a draft of any amendment to the statement of intent to the Minister for comment, and prepare and publicly disclose the final amendment, in accordance with regulation 33B(2) and (3) (applied with any necessary modifications).
- (3) An amendment to the statement of intent is in force—
  - (a) on the date that the final amendment is provided to the Minister; and
  - (b) until the close of the final day of the last financial year to which the original statement of intent relates.

**16 Regulation 34 revoked (Cost-effective requirement)**

Revoke regulation 34.

**17 Regulation 36 replaced (Membership)**

Replace regulation 36 with:

**36 Appointment of Board members**

- (1) The Board consists of 6 members of which—
  - (a) 3 members are to be elected by producers in accordance with regulation 37; and
  - (b) 2 members are to be appointed by the Minister in accordance with subclause (2); and
  - (c) 1 member is to be appointed as chairperson by the Minister in accordance with subclause (3).
- (2) An appointment under subclause (1)(b) must be made in the following manner:
  - (a) the Board must identify the skills, knowledge, and experience that a member must have;
  - (b) the chief executive of the Ministry must compile a list of people who are fully independent of the kiwifruit industry and suitable for appointment as members;
  - (c) the chief executive of the Ministry must act under paragraph (b)—
    - (i) in consultation with the chairperson; and

- (ii) after taking into account the matters identified under paragraph (a):
    - (d) the Minister must appoint the members from the list.
- (3) An appointment under subclause (1)(c) must be made in the following manner:
  - (a) the chief executive of the Ministry must compile, in consultation with the Board, a list of people who are fully independent of the kiwifruit industry and suitable for appointment as chairperson; and
  - (b) the Minister must appoint the chairperson from the list.
- (4) If the chairperson and 1 or more members are being considered for appointment at the same time, the chairperson must be appointed first.

### **36A Vacation of and removal from office**

- (1) A person vacates office as a member of the Board if the person is, or becomes, a director of ZGL.
- (2) The Minister may, at any time for just cause, remove a member of the Board.
- (3) The removal must be made by written notice to the member (with a copy provided to the Board).
- (4) The notice must—
  - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) state the reasons for the removal.
- (5) In this regulation, **just cause** includes misconduct, inability to perform the functions of office, or neglect of duty.

### **18 Regulation 37 amended (Election of producer representatives)**

In regulation 37(1), replace “regulation 36(a)” with “regulation 36(1)(a)”.

### **19 Regulation 39 amended (Funding)**

- (1) In regulation 39(1)(b), replace “applicants” with “ZGL and the applicants”.
- (2) After regulation 39(2), insert:
- (3) When deciding the kind and level of charges to impose under this regulation, the Board must take the following principles into account, as far as is reasonably practicable:
  - (a) equity, in that funding for a particular function, power, or service, or a particular class of function, power, or service, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant functions, powers, or services at a level commensurate with their use or benefit from the function, power, or service:
  - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:

- (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service;
  - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.
- (4) At the same time that the Board publicly discloses the final statement of intent under regulation 33B(2), the Board must publicly disclose a statement of how funding has been achieved under this regulation. The statement—
- (a) must set out the funding methods or structures that the Board has applied in the last 3-year period; and
  - (b) explain how the Board decided the kind and level of charges to impose in that period; and
  - (c) may include any other information that the Board considers relevant.
- (5) In subclause (4), **last 3-year period** means the 3 consecutive financial years immediately before the first financial year to which the final statement of intent relates.
- (6) The first statement under subclause (4) must relate to the period set out in clause 8 of Schedule 1.

## 20 Regulation 40 replaced (Compliance with Financial Reporting Act 1993)

Replace regulation 40 with:

### 40 Financial statements must be prepared, audited, and publicly disclosed

- (1) The Board must ensure that, within 3 months after the end of the financial year,—
- (a) financial statements that comply with generally accepted accounting practice are—
    - (i) completed in relation to the Board and that financial year; and
    - (ii) dated and signed on behalf of the Board by 2 members of the Board; and
  - (b) the financial statements are audited by a qualified auditor; and
  - (c) the financial statements and the auditor's report are publicly disclosed.
- (2) In this regulation, **financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013.

### 40A Board must provide certain information to Ministry

- (1) The Board must provide to the Ministry, within 3 months after the end of each financial year,—

- (a) a copy of its most recent audited financial statements and a copy of the auditor's report; and
  - (b) the information required to be publicly disclosed under regulation 15; and
  - (c) a document that compares the performance indicators in the Board's statement of intent with the actual performance information for the financial year.
- (2) In this regulation, **performance indicators** means the information required under regulation 33A(3)(e).

## **21 Regulations 47 to 49 revoked**

Revoke regulations 47 to 49.

## **22 Schedule 1 amended**

- (1) In the heading to Schedule 1, replace "rr 2A, 49" with "r 2A".
- (2) In Schedule 1, replace the heading above clause 1 with:

**Part 1**  
**Provisions relating to Kiwifruit Export Amendment Regulations 2014**

- (3) In Schedule 1, after clause 2, insert the Part 2 set out in the Schedule of these regulations.

## **23 Schedule 2 amended**

- (1) In Schedule 2, replace clause 2 with:

### **2 Reappointment of Board members**

A member of the Board—

- (a) is eligible for reappointment or re-election; but
  - (b) ceases to be eligible after holding office for 3 terms, whether consecutively or not.
- (2) In Schedule 2, clause 3, after "member's", insert "first or second".
  - (3) In Schedule 2, clause 3, insert as subclause (2):
  - (2) A member ceases to hold office on the expiry of the member's third term of office.
  - (4) In Schedule 2, after clause 4, insert:

### **4A No compensation for loss of office**

A member of the Board is not entitled to any compensation or other payment or benefit on ceasing, for any reason, to hold office as a member.

- (5) In Schedule 2, clause 5(4), replace “3 members” with “4 members”.
- (6) In Schedule 2, clause 5(6), replace “3 members” with “4 members”.
- (7) In Schedule 2, after clause 5(7), insert:
- (8) Subclauses (4) and (6) are subject to clause 11 of Schedule 1.

## Schedule

### New Part 2 inserted into Schedule 1

r 22

## Part 2

### Provisions relating to Kiwifruit Export Amendment Regulations 2017

#### 3 Interpretation

In clauses 4 to 11, **amendment regulations** means the Kiwifruit Export Amendment Regulations 2017.

#### 4 Transitional and saving provision relating to core business activities

- (1) This clause applies to any activity that ZGL—
  - (a) was permitted to carry out under regulations 2 and 11 before those regulations were amended by the amendment regulations; and
  - (b) had been carrying out before 1 April 2017.
- (2) ZGL may, until 1 April 2019, continue to carry out any activity to which this clause applies despite regulation 11 and the definition of core business in regulation 2.
- (3) However, regulation 10A applies in respect of any activity that ZGL is permitted to continue to carry out under subclause (2) (despite ZGL having carried out that activity before 1 April 2017).
- (4) If ZGL decides to expand the scope of any activity that it is permitted to continue carry out under subclause (2), regulation 11 and the definition of core business in regulation 2 apply to the expanded activity.
- (5) This clause does not apply to an activity if—
  - (a) ZGL relies on clause 5 (instead of this clause) to continue to carry out the activity; and
  - (b) ZGL complies with clause 6 in relation to the activity.
- (6) In this clause and clause 5, an **activity** includes, without limitation, the ownership or operation of an asset.

**5 Transitional provision relating to existing contracts and assets**

- (1) This clause applies to—
  - (a) a contract (the **contract**) that was entered into before 1 April 2017 that is still in force immediately before the commencement of the amendment regulations;
  - (b) an asset (the **asset**) that is owned or operated by ZGL immediately before 1 April 2017.
- (2) Despite regulation 11, ZGL may continue to carry out activities that consist of—
  - (a) performing the contract or receiving the benefit of the contract;
  - (b) owning or operating the asset.
- (3) Regulation 10A does not apply to the activities that ZGL is permitted to continue to carry out under subclause (2).
- (4) This clause—
  - (a) ceases to apply to the contract at the end of its current term (and this clause does not apply to any new or extended term of the contract);
  - (b) does not apply to any variation of the contract that is entered into after the commencement of the amendment regulations;
  - (c) ceases to apply to an asset that is owned by ZGL if the asset is sold to any other person (in whole or in part).

**6 ZGL must provide information about existing contracts and assets**

- (1) If ZGL intends to rely on clause 5 in relation to an existing contract or asset, ZGL must provide information to the Board that is sufficient to—
  - (a) clearly identify that contract or asset; and
  - (b) enable the Board to monitor ZGL's compliance with regulations 10A and 11.
- (2) Clause 5 ceases to apply to a contract or an asset if the information is not provided to the Board on or before 1 February 2018.

**7 Transitional provisions relating to statements of intent**

The first statement of intent required by regulation 33A must,—

- (a) despite regulation 33A, relate to the period commencing on 1 October 2017 and ending on 31 March 2020; and
- (b) despite regulation 33B, be provided in draft to the Minister by 1 September 2017; and
- (c) despite regulation 33B, be provided in its final form to the Minister by 1 October 2017.

**8 Transitional provision relating to funding and cost-recovery**

The first statement required to be publicly disclosed by regulation 39(4) must, despite regulation 39(5), relate to the period commencing on 1 October 2017 and ending on 31 March 2020.

**9 Transitional provisions relating to financial statements**

- (1) These regulations, as amended by regulation 20 of the amendment regulations, apply in relation to the financial years that commence on or after the commencement of that regulation.
- (2) Despite regulation 40A(1)(c), the first document that the Board is required to provide under that paragraph must compare the performance indicators in the Board's statement of intent with the actual performance information for the period commencing on 1 October 2017 and ending on 31 March 2018.

**10 Transitional and savings provisions relating to membership of Board**

- (1) The Minister must appoint the sixth member of the Board as soon as practicable after the commencement of the amendment regulations.
- (2) Despite regulation 36, a current Board member continues to hold office until the expiry of his or her term.
- (3) However, subclause (2) is subject to regulation 36A.
- (4) When a current Board member's term of office expires or the member otherwise vacates, or is removed from, office, the member must be replaced in the following manner:
  - (a) a member who was elected by producers must be replaced in accordance with regulation 37:
  - (b) a member who was appointed by New Zealand Kiwifruit Growers Incorporated or its successor must be replaced by a member appointed by the Minister in accordance with regulation 36(2):
  - (c) the chairperson must be replaced in accordance with regulation 36(3).
- (5) In this clause, **current Board member** means a person whose term as a Board member commenced before the commencement of the amendment regulations and expires—
  - (a) within 2 months before that commencement; or
  - (b) after that commencement.

**11 Transitional provisions relating to quorum of Board**

- (1) Clause 5(4) and (6) of Schedule 2 applies only after the sixth member of the Board is appointed.
- (2) Until the sixth member of the Board is appointed, clause 5(4) and (6) of Schedule 2, as it was before the amendment regulations came into force, applies.

Michael Webster,  
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, which come into force on 1 August 2017, amend the Kiwifruit Export Regulations 1999.

The main changes are as follows:

- *regulation 4* amends regulation 2 to expand the definition of the core business of Zespri Group Limited (**ZGL**). ZGL's core business now includes the marketing of New Zealand-grown kiwifruit, market development for New Zealand-grown kiwifruit, and research and development relating to kiwifruit:
- *regulation 8* inserts *new regulation 10A* (the prior notice rule). That regulation requires ZGL to inform the New Zealand Kiwifruit Board (the **Board**) before carrying out activities that are not its core business but do support the core business:
- *regulation 9* replaces the non-diversification rule in regulation 11. Under the new rule ZGL must not carry out activities that do not support the core business unless all producers have been informed, at least 75% of producers have agreed by vote (being producers who produced at least 75% of the kiwifruit supplied to ZGL by those who voted), and ZGL has minimised the risks for the producers who have not agreed:
- *regulation 10* replaces the requirements relating to ZGL's corporate form in regulation 22. Regulation 22 currently prevents ZGL from having rules about maximum shareholding. *New regulation 22* allows for rules about maximum shareholding if they are based on the amount of kiwifruit supplied to ZGL, they apply only to producers, and the additional resolution procedure in *new regulation 23A* is complied with:
- *regulation 11* amends regulation 23, which relates to ZGL's constitution. The new regulation now allows the rights in section 36(1)(b) of the Companies Act 1993 to be negated or altered (only in so far as they apply to shareholders who are not producers). The rights in section 36(1)(b) are the rights to an equal share in dividends. This alteration also requires the additional resolution procedure in *new regulation 23A* to be complied with:
- *regulation 12* inserts *new regulation 23A* to provide for this resolution procedure. Under this procedure all shareholders are entitled to vote and each share entitles the shareholder to one vote. The resolution must be passed by a majority of 75% of the votes of all shareholders and of each interest group:
- *regulation 15* inserts new requirements for a statement of intent for the Board in *new regulations 33A to 33C*:

- *regulation 17* replaces regulation 36 (which relates to the membership of the Board). The Board will now have 6 members rather than 5. Three members will continue to be elected by producers. Two members will be appointed by the Minister (rather than 1 member being appointed by New Zealand Kiwifruit Growers Incorporated). The Minister will appoint the chairperson (rather than the chairperson being appointed by the other members):
- *regulation 17* also inserts *new regulation 36A*, which prevents a person from holding office as a member of the Board and as a director of ZGL at the same time and enables the Minister to remove a member from office for just cause:
- *regulation 19* amends regulation 39. Regulation 39 currently provides for the Board to be funded on a cost recovery basis. The amendments add principles that the Board must take into account when deciding the kind and level of charges:
- *regulation 20* replaces regulation 40 to update requirements relating to the Board's financial statements.

The *Schedule* sets out detailed transitional provisions arising from the changes made by these regulations.

### Regulatory impact statement

The Ministry for Primary Industries produced a regulatory impact statement in June 2017 and a further one in July 2017 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- <https://mpigovtnz.cwp.govt.nz/document-vault/18734>
- <https://mpigovtnz.cwp.govt.nz/document-vault/18737>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 13 July 2017.

These regulations are administered by the Ministry for Primary Industries.