

Kiwifruit Export Amendment Regulations (No 2) 2000

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

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1 Title

- (1) These regulations are the Kiwifruit Export Amendment Regulations (No 2) 2000.
- (2) In these regulations, the Kiwifruit Export Regulations 1999¹ are called "the principal regulations".

2 Commencement

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

¹ SR 1999/310

3 Non-diversification rule

Regulation 11 of the principal regulations is amended by inserting, after subclause (3), the following subclause:

- “(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 Continuing requirements as to ZGL Limited’s corporate form

- (1) Regulation 22(1)(b) of the principal regulations is amended by revoking subparagraph (i), and substituting the following subparagraph:

“(i) means the owners of land in New Zealand on which kiwifruit is produced for export sale; and”.

- (2) Regulation 22(1) is amended by adding the following paragraph:

“(c) Allow persons who cease to be producers to trade their shares to dispose of them.”

5 Contents of constitution

Regulation 23 of the principal regulations is amended by revoking subclause (1), and substituting the following subclause:

- “(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 in respect of a holder of shares who has ceased to be a producer within the meaning of regulation 22(1)(b) or for the purpose of the enforcement of any rules about maximum shareholdings in ZGL Limited under regulation 22(2):

“(b) the rights specified in section 36(1)(b) and (c) of the Companies Act 1993 may not be negated or altered.”

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, which come into force 28 days after notification in the *Gazette*, have 3 effects.

First, they provide a temporary exemption from what is known as the non-diversification rule. This rule, which has applied to Zespri Group Limited (**ZGL**) since 1 April 2000, limits its ability to carry out activities not necessary for its core business, without seeking the agreement of the providers of the capital used.

The exemption allows ZGL to procure the supply and marketing of non-New Zealand-grown produce under an agreement underwritten by Kiwifruit International Limited (**KIL**). KIL was set up as a separately owned company so that only those producers who voluntarily chose to participate in the business of all-year-round marketing of kiwifruit and produce from other countries would bear the risks of doing so. The exemption gives ZGL until 1 April 2001 to comply fully with the non-diversification rule in respect of any residual risk that may fall on ZGL despite the underwriting agreement.

Secondly, they alter the class of people amongst whom the shares of ZGL must be traceable. Currently the principal regulations require ZGL shares to be fully tradeable at least among producers, where producers includes, for all time, people who have received shares under the ZGL share allocation plan on the restructuring. This amendment has the effect that people who were allocated shares under the share allocation plan in the Act and who cease to own their orchards will no longer be part of the class of people amongst whom shares must be tradeable. As a result, it will be open to ZGL shareholders to change the constitution to set new rules to apply when people sell their orchards.

Thirdly, they allow ZGL shareholders to change the constitution to suspend the voting rights attaching to shares issued under the share

allocation plan provided for in the Act if the holder of the shares has ceased to be a producer of kiwifruit. Currently the principal regulations prevent the negation or variation of all of the rights attaching to those shares. The regulations as now amended continue to prevent the negation or variation of dividend and distribution rights attaching to the shares.

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