



ANALYSIS

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 1970, No. 140

An Act to amend the Cooperative Dairy Companies Act 1949
[2 December 1970]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Cooperative Dairy Companies Amendment Act 1970, and shall be read together with and deemed part of the Cooperative Dairy Companies Act 1949 (hereinafter referred to as the principal Act).

2. Registration of cooperative dairy company—Section 4 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:

“(6) If the Registrar is notified by any company registered under this Act that it is not or has ceased to be a cooperative dairy company within the meaning of this Act, he shall cancel its registration, and the company shall cease to be subject to the provisions of this Act.

“(7) If the Registrar has not been notified in accordance with subsection (6) of this section, but at any time has grounds to believe that any company registered under this Act is not or has ceased to be a cooperative dairy company within the meaning of this Act, he shall refer those grounds to the Tribunal, and give notice immediately to the company that he has done so. Every notice shall inform the company of the grounds referred to the Tribunal.

“(8) The Tribunal shall, after giving the company a reasonable opportunity to be heard on the matter and hearing such submissions (if any) as the company may make, consider the grounds referred to it by the Registrar and any submissions made by the company, and shall decide whether the company is, or is not, or has ceased to be, a cooperative dairy company within the meaning of this Act.

“(9) Every decision of the Tribunal under this section shall be reported by the Tribunal to the Registrar, who shall immediately notify the company. If the decision is that the company is not or has ceased to be a cooperative dairy company within the meaning of this Act, the Registrar shall forthwith cancel the registration of the company which shall cease to be subject to the provisions of this Act.”

3. Consolidation or subdivision of share capital—(1) The principal Act is hereby further amended by inserting, after section 7A of the principal Act (as inserted by section 2 of the Cooperative Dairy Companies Amendment Act 1959), the following section:

“7B. (1) Notwithstanding anything in this Act, or in any articles of association of any cooperative dairy company, and notwithstanding that the articles may constitute a contract or provide evidence of the terms of a contract between the company and the shareholders or any of them, if any cooperative dairy company, by resolution in accordance with its articles of association, consolidates and divides all or any of its share capital into shares of larger amount than its existing shares, or subdivides its existing shares, or any of them, into shares of smaller amount than is fixed by its memorandum of association, it shall by the same resolution amend those articles of association of the company relating to any shareholding required to be held by shareholders so that the new shareholding required to be held shall be that which bears the same proportion to the existing shareholding

as the nominal value of any new share bears to the nominal value of any existing share to be consolidated or subdivided; but no consolidation or subdivision shall impose on any shareholder an obligation to hold shares having a total nominal value higher than the total nominal value of all existing shares required to be held.

“(2) No consolidation or subdivision of share capital shall have any effect unless the articles of association relating to the minimum shareholding required to be held by supplying shareholders are amended in accordance with subsection (1) of this section.

“(3) Every resolution passed in accordance with this section shall be deemed for the purposes of this Act to have come into force on the day 5 years immediately before the day on which the resolution was passed.”

(2) Section 8 of the principal Act is hereby consequentially amended by adding the following subsection:

“(5) Nothing in this section, nor in section 9 of this Act, shall apply to any consolidation or subdivision of share capital carried out in accordance with section 7B of this Act.”

4. Functions of Tribunal—Section 20 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) To decide under section 4 of this Act whether a company is or is not or has ceased to be a cooperative dairy company within the meaning of the Act:”.

5. Power of liquidator to accept shares, etc., as consideration for sale of property or company to another cooperative dairy company—(1) The principal Act is hereby further amended by inserting, after section 24, but before the heading “General Provisions”, the following section:

“24A. (1) If a company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another cooperative dairy company within the meaning of this Act (in this section called the transferee company), the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority

in respect of any particular arrangement, receive (in compensation or part compensation for the transfer or sale) shares, policies, or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

“(2) Subject to subsection (3) of this section, every transfer, sale, or arrangement made by a transferor company and a transferee company pursuant to this section shall be binding on all members of the transferor company.

“(3) No transfer, sale, or other arrangement mentioned in this section shall be binding on any member of the transferor company unless, before proceeding with the transfer, sale, or other arrangement,—

“(a) The transferor company forwards to each member of the company a detailed statement of the proposed transfer, sale, or other arrangement, and calls a meeting of all members by giving not less than 14 clear days’ notice to each member specifying the time, place, and the object of the meeting which shall be to vote on the proposed transfer, sale, or other arrangement; and

“(b) A resolution is passed at the meeting, by a majority of the members entitled to vote at the meeting, that the proposed transfer, sale, or other arrangement proceed in accordance with the proposal or in such amended form as may be resolved; and

“(c) The transferor company notifies the transferee company of the resolution passed in accordance with paragraph (b) of this subsection in its proposed or amended form; and

“(d) The transferee company forwards to each of its members a copy of the detailed statement mentioned in paragraph (a) of this subsection in such amended form as may be resolved in accordance with paragraph (b) of this subsection, and calls a meeting of all members of the transferee company by giving not less than 14 clear days’ notice to each member specifying the time, place, and the object of the meeting which shall be to vote

on the proposed transfer, sale, or other arrangement; and

“(e) An extraordinary resolution is passed at the meeting called in accordance with paragraph (d) of this subsection that the proposed transfer, sale, or other arrangement proceed in accordance with the terms of the resolution passed by the members of the transferor company in accordance with paragraph (b) of this subsection; and

“(f) The transferee company notifies the transferor company of the extraordinary resolution passed in accordance with paragraph (e) of this subsection; and

“(g) Within 1 month after the passing of the extraordinary resolution mentioned in paragraph (e) of this subsection, the transferor company, by giving not less than 14 clear days’ notice to each member of the company, calls a meeting of all members at which the resolution passed by the transferor company in accordance with paragraph (b) of this subsection is confirmed by extraordinary resolution.

“(4) If any member of the transferor company who did not vote in favour of the extraordinary resolution mentioned in paragraph (g) of subsection (3) of this section notifies his intention not to supply the transferee company with milk, cream, or butterfat, or otherwise expresses his dissent from that resolution, in writing delivered to the registered office of the transferor company within 7 days after the passing of that resolution, he may require the company to purchase his interest at a price equivalent to the amount paid up or deemed to be paid up on the shares held by that member in the transferor company. The money required to pay the purchase price shall, if necessary, be raised by the company in such manner as shall be determined by extraordinary resolution, and the purchase price shall be paid before the transferor company is dissolved.

“(5) A special resolution, or an extraordinary resolution, shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if within 1 year after the date of passing that resolution an order is made for winding up the company by or subject to the

supervision of the Court, the special resolution or the extraordinary resolution shall not be valid unless sanctioned by the Court.

“(6) Notwithstanding anything in section 3 or section 8 of this Act, or in the articles of association of any cooperative dairy company,—

“(a) Regulations 66, 68, and 70 to 80, contained in the model articles of association set out in the First Schedule to this Act shall, for the purposes of this section, apply to every cooperative dairy company in every way as if those regulations were expressly adopted by the company, and the articles of association of the company shall be read subject to those regulations; and

“(b) Any person who at the date of dissolution of the transferor company is qualified to act as a director of the company shall for a period of 1 year from that date be deemed by virtue of that qualification to be qualified to act as a director of the transferee company.”

(2) Section 28 of the principal Act (as substituted by section 7 of the Cooperative Dairy Companies Amendment Act 1956) is hereby consequentially amended by adding to subsection (2) the following paragraph:

“(d) Section 278 shall be construed as if the reference therein to a transferee company, whether a company within the meaning of the Companies Act 1955 or not, were a reference to any company other than a cooperative dairy company within the meaning of this Act.”

This Act is administered in the Department of Justice.
