ANALYSIS

Title
1. Short Title and commencement
2. Interpretation
3. New sections substituted
- 2A. Meaning of 'qualifying company'
- 2B. Meaning of 'solvency test'
- 2C. Approval of dairy industry
- 2D. Approval of qualifying companies holding shares

4. Constitution of Board
5. New sections relating to directors inserted
- 3AB. Meaning of 'board of directors'
- 3AC. Management of Board
- 3AD. Duties of directors

6. New section inserted
- 3ACA. Major transactions

7. New sections relating to constitution inserted
- 3AE. Board to have written constitution
- 3AF. Contents of constitution
- 3AG. Effect of constitution
- 3AH. Alteration to constitution

8. Extraordinary vacancies
9. New Part substituted

PART IA

CAPITAL AND ASSETS OF BOARD

- 15A. Initial issue of shares
- 15B. Issue of additional shares
- 15C. Limit on additional shares
- 15D. Issue of shares during transition period
- 15E. Nominal value of shares
- 15F. Consideration for issue of shares
- 15G. Rights and powers attaching to shares
- 15H. Types of shares
- 15I. Surrender of shares
- 15J. Application of Companies Act 1993 to surrender of shares
- 15K. Consideration for surrender of shares
- 15L. Reduction in amount payable on surrender of shares
- 15M. Cancellation of shares surrendered
- 15N. Board may hold its own shares
- 15O. Rights and obligations of surrendered shares held by Board suspended
- 15P. Reissue of shares held by Board
- 15Q. Shares not transferable
- 15R. Secretary to keep register of qualifying companies
- 15S. Share register to be available for inspection
- 15T. Liability of qualifying companies holding shares
- 15U. Share certificates
- 15V. Amalgamations and acquisitions
- 15W. Application of section 15V to amalgamations and acquisitions before commencement date
- 15X. Dividends
- 15Y. Meetings of qualifying companies holding shares
- 15Z. Resolutions of qualifying companies holding shares
- 15ZA. Management review by qualifying companies holding shares
- 15ZB. Annual meeting of qualifying companies holding shares
- 15ZC. Special meetings of qualifying companies holding shares
- 15ZD. Dissolution of Board
- 15ZE. Taxation
- 15ZF. Application of section 17A of Judicature Act 1908

10. Consequential repeal
11. Rights of registered qualifying persons under former Part IA to cease
12. Establishing value for components of milk
13. Annual trading surpluses

14. Delegation of powers of Board
15. New sections inserted
55A. Board records
55B. Inspection of records by directors
55C. Accounting records to be kept
16. Board to prepare financial statements
17. Annual report and statements to be laid before House of Representatives
18. New Fourth Schedule added to principal Act
19. New Fifth Schedule added to principal Act
20. Amendments to Income Tax Act 1994
Schedules

1996, No. 85

An Act to amend the Dairy Board Act 1961

[*7 August 1996*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Dairy Board Amendment Act (No. 2) 1996, and shall be read together with and deemed part of the Dairy Board Act 1961 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

(3) Sections 2, 3, 6, 7, 9, 10, 11, 13, 19, and 20 of, and the Second Schedule to, this Act shall come into force on a date to be appointed by the Governor-General by Order in Council on the recommendation of the Minister.

(4) The Minister shall not make a recommendation under subsection (3) of this section unless satisfied that the Board has obtained at a meeting of duly authorised representatives of qualifying companies, or in writing, the approval to the form of the constitution to be adopted by the Board under section 3AE of the principal Act, of qualifying companies (including, as the case requires, successors of qualifying companies) whose aggregate voting milksolids during the most recent complete season and the 2 seasons before it was, in the Boards's opinion, more than 75 percent of the aggregate quantity of the voting milksolids of all qualifying companies for the period.

(5) For the purposes of subsection (4) of this section, "qualifying company" has the meaning that term will have in section 2A of the principal Act on the coming into force of section 3 of this Act.

2. Interpretation—(1) The principal Act is hereby amended by repealing section 2, and substituting the following section:

"2. (1) In this Act, unless the context otherwise requires,—

"'Assets', in relation to the Board, means property of all kinds, both real and personal, of whatever nature and

wherever situated; and (without limiting the generality of the foregoing) includes—

"(a) Property over which the Board has a power of disposition or appointment; and

"(b) Any copyright, patent, registered design, trademark, knowhow, or other intellectual property owned by the Board; and

"(c) Choses in action and money owned by or vested in the Board; and

"(d) The Board's goodwill; and

"(e) Rights, interests, and claims in or to property of every kind,—

"(i) Whether or not arising from, accruing under, created or evidenced by, or the subject of any instrument or other document; and

"(ii) Whether liquidated or unliquidated; and

"(iii) Whether actual, contingent, prospective, or vested,—

exercisable by or vested in, or capable of being made by, the Board;—

but does not include any property held by the Board pursuant to section 45 of this Act for the purpose of any superannuation scheme or schemes:

" 'Board' means the New Zealand Dairy Board established under this Act:

" 'Board of directors' has the meaning set out in section 3AB of this Act:

" 'Class', in relation to shares, means a class of shares having attached to them identical rights, privileges, limitations, or conditions:

" 'Commencement date' means the date appointed under section 1 (3) of the Dairy Board Amendment Act (No. 2) 1996 for the coming into force of sections 2, 3, 6, 7, 9, 10, 11, 13, 19, and 20 of, and the Second Schedule to, that Act:

" 'Commission' means the New Zealand Dairy Products Marketing Commission established under the Dairy Products Marketing Commission Act 1947:

" 'Constitution' means the constitution of the Board adopted pursuant to section 3AE or section 3AH (a) of this Act; and includes the constitution so adopted as amended from time to time:

" 'Co-operative company' means—

"(a) A co-operative dairy company registered under the Co-operative Dairy Companies Act 1949; and

"(b) A co-operative milk marketing company registered under the Co-operative Companies Act 1956; and

"(c) A co-operative dairy company registered under Part III of the Co-operative Companies Act 1996:

" 'Dairy Board' means the New Zealand Dairy Board established under the Dairy Board Act 1953:

" 'Dairy factory' means a factory for the time being registered as a manufacturing dairy pursuant to regulations under the Dairy Industry Act 1952:

" 'Dairy produce' includes—

"(a) Milk and cream; and

"(b) Butter, cheese, and all other products of milk or cream, whether derived therefrom by manufacturing processes or otherwise; and

"(c) Any compound or mixture that contains or is derived from milk, cream, or any product of milk or cream, and that is declared by Order in Council to be dairy produce for the purposes of this Act:

" 'Director' means a director of the Board:

" 'Export produce' means dairy produce intended for export; and includes—

"(a) Any goods or produce manufactured in New Zealand and intended for export that contain more than 30 percent by weight of dairy produce; and

"(b) Any milk or cream acquired by the Board from a co-operative dairy company for the purposes of manufacture into a product intended for export:

" 'Manufacturer' means a person who occupies a dairy factory; and, in relation to any dairy factory, means its occupier:

" 'Milksolids' means the components of milk valued by the Board under section 26 of this Act:

" 'Minister' means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act:

" 'Occupier', in relation to any land,—

"(a) Where a person other than its owner has a right to occupy it by virtue of a lease or tenancy granted for a term of 12 months or more, means that person; and

"(b) In every other case, means its owner:

" 'Own-supply milksolids', in relation to a manufacturer in any season, means the milksolids contained in milk or

cream acquired by the manufacturer during the season—

"(a) From supplying shareholders of the manufacturer; or

"(b) Pursuant to arrangements between the manufacturer and the farmers who produced the milk or cream (not being supplying shareholders of the manufacturer), requiring the farmers to supply to the manufacturer all milk or cream (as the case requires) produced by the farmers, during the season and not required by the farmers; or

"(c) From milk stations (within the meaning of section 2 of the Dairy Industry Act 1952);—

but does not include—

"(d) Milksolids contained in dairy produce sold or transferred by the manufacturer to any person and subsequently reacquired by the manufacturer in any form; and

"(e) The milksolids contained in any milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form as milk or cream:

" 'Qualifying company' has the meaning set out in section 2A of this Act:

" 'Qualifying company holding shares' means a qualifying company that holds shares that have been issued under any of sections 15A to 15D of this Act:

" 'Qualifying dairy produce' means dairy produce which a qualifying company satisfies the Board is disposed of otherwise than to the Board and which, at the time of disposal is—

"(a) Owned by the qualifying company or by any wholly-owned subsidiary of the qualifying company, not being a subsidiary that is a qualifying company; and

"(b) A class of dairy produce which is subject to a notional price fixed by the Board pursuant to section 27 of the Act:

" 'Qualifying export produce' means export produce which is supplied to the Board by or on behalf of a qualifying company and which, at the time of supply, is owned by the qualifying company or by any wholly-owned subsidiary of the qualifying company, not being a subsidiary that is a qualifying company:

" 'Qualifying milksolids', in relation to a qualifying company, means the kilograms of milksolids that, in the immediately preceding season, were paid for by the Board in respect of any qualifying export produce and contained in any qualifying dairy produce:

" 'Season' means a period of 12 months ending with the 31st day of May in any year:

" 'Secretary' means the employee of the Board for the time being directed by the Board to be its secretary for the purposes of this Act; and includes any employee of the Board for the time being directed by the Board to be its acting Secretary:

" 'Share' means a share in the Board issued pursuant to Part IA of this Act:

" 'Supplying shareholder',—

"(a) In relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949, has the same meaning as in section 2 (1) of that Act:

"(b) In relation to a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act, has the same meaning as in section 34 of that Act:

" 'Town milk', in relation to a qualifying company, means milk or cream sold by the company for, or for resale for, human consumption in New Zealand in liquid form as milk or cream:

" 'Voting milksolids',—

"(a) In relation to a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act, means own-supply milksolids; and

"(b) In relation to a co-operative milk marketing company registered under the Co-operative Companies Act 1956 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (b) and (c) of that Act, means milksolids—

"(i) Supplied by the company to a manufacturer who or that is not a co-operative dairy

company registered under the Co-operative Dairy Companies Act 1949 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in section 35 (1) (a) and (b) of that Act; and

"(ii) Manufactured into dairy produce (other than milk or cream sold by the manufacturer for, or for resale for, human consumption in New Zealand in liquid form as milk or cream) by the manufacturer.

"(2) For the purposes of the definitions of the terms 'qualifying dairy produce', 'qualifying export produce', and 'town milk' in subsection (1) of this section, the references in the definitions of the terms 'dairy produce' and 'export produce' to 'milk' and 'cream' shall be construed as references to cows milk or cream."

(2) The following enactments are hereby consequentially repealed:

(a) Section 10 (6) (a) of the Dairy Board Amendment Act 1965:

(b) Section 2 of the Dairy Board Amendment Act 1972:

(c) Sections 2 and 3 (2) of the Dairy Board Amendment Act 1980:

(d) Section 3 (1) of the Dairy Board Amendment Act 1988:

(e) Sections 7 (1) and 10 of the Dairy Board Amendment Act 1992:

(f) Section 2 of the Dairy Board Amendment Act 1996.

3. New sections substituted—(1) The principal Act is hereby amended by repealing section 2A (as inserted by section 4 of the Dairy Board Amendment Act 1988), and substituting the following sections:

"2A. **Meaning of 'qualifying company'**—(1) For the purposes of this Act, but subject to subsections (2) to (5) of this section, 'qualifying company' means a co-operative dairy company registered under the Co-operative Dairy Companies Act 1949 or a co-operative dairy company registered under Part III of the Co-operative Companies Act 1996 that carries on the activities described in paragraphs (a) and (b) of section 35 (1) of that Act, as the case may be, in which—

"(a) All the shares carrying voting rights in the company are held by supplying shareholders of the company; and

"(b) All the shares in the company (other than shares that are held by the company in itself on the surrender of those shares and that are deemed not to be cancelled) are held only by—

"(i) Supplying shareholders in proportion to milksolids supplied to the company by them; or

"(ii) Supplying shareholders who hold a greater or lesser number of shares than they are entitled to hold on the basis of the proportion of milksolids supplied by them to the company; or

"(iii) Persons who, in the Board's opinion, are no longer supplying shareholders but whose shares have yet to be surrendered to the company.

"(2) A company is not a qualifying company if the aggregate of—

"(a) The number of shares held by supplying shareholders referred to in subsection (1) (b) (ii) of this section that exceeds the proportion of milksolids supplied by them to the company; and

"(b) The number of shares held by persons referred to in subsection (1) (b) (iii) of this section—

exceeds 15 percent of the shares on issue by the company as at the 30th day of June in any year.

"(3) Where a company ceases to be a qualifying company, the Board may, on application by the company, treat the company as a qualifying company for a further period of 6 months and, in any such case, the company shall, during that period, be deemed to be a qualifying company for the purposes of this Act and the constitution.

"(4) A company that is a qualifying company on the commencement date is deemed, for the purposes of this Act, to have been a qualifying company during every season preceding the commencement date.

"(5) For the purposes of subsection (1) (b) of this section, a reference to the term 'milksolids' includes a reference to 'milkfat' or 'protein'.

"2B. **Meaning of 'solvency test'**—(1) For the purposes of this Act, the Board satisfies the solvency test if—

"(a) The Board is able to pay its debts as they become due in the normal course of business; and

"(b) The value of the Board's assets is greater than the value of its liabilities including contingent liabilities.

"(2) In determining, for the purposes of this Act, whether the value of the Board's assets is greater than the value of its

liabilities, including contingent liabilities, the board of directors—

"(a) Must have regard to—

"(i) The most recent financial statements of the Board prepared in accordance with section 66 of this Act; and

"(ii) All other circumstances that the directors know or ought to know affect, or may affect, the value of the Board's assets and the value of its liabilities, including contingent liabilities:

"(b) May rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances.

"(3) In determining, for the purposes of this section, the value of a contingent liability, account may be taken of—

"(a) The likelihood of the contingency occurring; and

"(b) Any claim the Board is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability.

"2C. **Approval of dairy industry**—Where in this Act the Board is forbidden to take any action without the approval of the dairy industry, the Board shall not take the action unless the Board has obtained at a meeting of duly authorised representatives of co-operative companies, or in writing, the approval to the taking of the action of those co-operative companies (including, as the case requires, successors of co-operative companies) whose aggregate voting milksolids during the most recent complete season and the 2 seasons before it was, in the Board's opinion, more than 75 percent of the aggregate quantity of the voting milksolids of all co-operative companies for the period.

"2D. **Approval of qualifying companies holding shares**—Where in this Act the Board is forbidden to take any action without the approval of qualifying companies holding shares, the Board shall not take the action unless the Board has obtained—

"(a) At a meeting of duly authorised representatives of qualifying companies holding shares, the approval to the taking of the action of those qualifying companies (including, as the case requires, successors of those qualifying companies) whose qualifying milksolids during the most recent complete season was, in the Board's opinion, more than 75 percent of the aggregate quantity of qualifying milksolids of those qualifying companies

voting on the action (or such higher proportion of qualifying milksolids as the constitution or this Act may specify as being required to the taking of the action); or

"(b) In writing, the approval to the taking of the action of those qualifying companies (including, as the case requires, successors of those qualifying companies) holding shares whose qualifying milksolids during the most recent complete season was, in the Board's opinion, more than 75 percent of the aggregate quantity of the qualifying milksolids of all qualifying companies for the period (or such higher proportion of qualifying milksolids as the constitution or this Act may specify as being required to the taking of the action)."

(2) Section 4 of the Dairy Board Amendment Act 1988 is hereby consequentially repealed.

4. Constitution of Board—Section 3AA of the principal Act (as inserted by section 2 (1) of the Dairy Board Amendment Act 1992) is hereby amended by omitting the words "The Board shall comprise", and substituting the words "The Board shall have a board of directors comprising".

5. New sections relating to directors inserted—The principal Act is hereby amended by inserting, after section 3AA (as inserted by section 2 (1) of the Dairy Board Amendment Act 1992), the following sections:

"3AB. **Meaning of 'board of directors'**—In this Act, unless the context otherwise requires, 'board of directors' means the directors of the Board constituting a quorum under section 12 (4) of this Act.

"3AC. **Management of Board**—(1) The business and affairs of the Board must be managed, and the powers of the Board exercised, by or under the direction or supervision of, the board of directors of the Board.

"(2) The board of directors of the Board has all the powers necessary for—

"(a) Managing, and for directing and supervising the management of, the business and affairs of the Board; and

"(b) Exercising the powers of the Board.

"3AD. **Duties of directors**—The provisions contained in the Fourth Schedule to this Act apply to the directors of the Board."

6. New section inserted—The principal Act is hereby amended by inserting, after section 3AC (as inserted by section 5 of this Act) the following section:

"3ACA. **Major transactions**—(1) The Board must not enter into a major transaction unless the transaction—

"(a) Has the approval of qualifying companies holding shares; or

"(b) Is contingent on the approval of qualifying companies holding shares.

"(2) In this section,—

" 'Assets' includes property of any kind, whether tangible or intangible; but does not include export produce:

" 'Major transaction', in relation to the Board, means—

"(a) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the Board's assets before the acquisition; or

"(b) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the Board the value of which is more than half the value of the Board's assets before the disposition; or

"(c) A transaction that has or is likely to have the effect of the Board acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the Board's assets before the transaction.

"(3) Nothing in paragraph (c) of the definition of the term 'major transaction' in subsection (2) of this section applies by reason only of the Board giving, or entering into an agreement to give, a floating charge secured over assets of the Board the value of which is more than half the value of the Board's assets for the purpose of securing the repayment of money or the performance of an obligation.

"(4) Nothing in this section applies to a major transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Board.

"(5) Nothing in this section applies to a transaction or part of a transaction relating to the acquisition or disposition of export produce by the Board."

7. New sections relating to constitution inserted—The principal Act is hereby amended by inserting, after section 3AD (as inserted by section 5 of this Act), the following sections:

"3AE. **Board to have written constitution**—The Board must have a written constitution and must adopt, as its initial constitution, the constitution approved in accordance with section 1 (4) of the Dairy Board Amendment Act (No. 2) 1996.

"3AF. **Contents of constitution**—The constitution—

"(a) Must contain the matters required by this Act to be contained in it:

"(b) May contain matters relating to the issue and holding of shares, dividends payable in respect of shares, and other matters contemplated by this Act relating to shares.

"3AG. **Effect of constitution**—(1) The constitution has no effect to the extent that it contravenes, or is inconsistent with, this Act.

"(2) Subject to this Act, the constitution is binding as between—

"(a) The Board and each qualifying company holding shares; and

"(b) Each qualifying company holding shares—

in accordance with its terms.

"3AH. **Alteration to constitution**—(1) Subject to subsection (2) of this section, qualifying companies holding shares may, from time to time, by resolution,—

"(a) Revoke the constitution and adopt a new one:

"(b) Amend the constitution.

"(2) A resolution to revoke the constitution and adopt a new one or amend the constitution, as the case may be,—

"(a) May be proposed by the Board or by a qualifying company holding shares:

"(b) Is not effective unless it is approved in the manner specified in section 2D of this Act and, in the case of a resolution proposed by a qualifying company holding shares, it is approved by the Board."

8. Extraordinary vacancies—Section 7 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

"(1) A director may at any time be removed from office by the Minister if the Minister is satisfied as to—

"(a) The disability, bankruptcy, neglect of duty, or misconduct of the director; or

"(b) The failure of the director to comply with any duty or obligation imposed on the director by the Fourth Schedule to this Act.

"(1A) A director may resign from office at any time by giving written notice to the Minister."

9. New Part substituted—The principal Act is hereby amended by repealing Part IA (as inserted by section 9 of the Dairy Board Amendment Act 1992), and substituting the following Part:

"PART IA

"CAPITAL AND ASSETS OF BOARD

"15A. **Initial issue of shares**—(1) The Board shall, as soon as reasonably practicable after this section comes into force,—

"(a) Make a determination in accordance with subsection (2) of this section of the number of kilograms of milksolids attributable to each qualifying company for the season ending on the close of the 31st day of May 1996; and

"(b) Issue to each qualifying company, as fully paid, one share for each kilogram of milksolids determined by the Board as attributable to that company.

"(2) In determining the number of milksolids attributable to a qualifying company, the Board shall:

"(a) Take into account the number of kilograms of milksolids paid for by the Board in respect of any qualifying export produce and the number of kilograms of milksolids contained in any qualifying dairy produce of the qualifying company for that season; and

"(b) If the Board thinks fit, take into account the number of kilograms of milksolids contained in milk sold by the qualifying company to another qualifying company or acquired by the qualifying company from another qualifying company in that season; and

"(c) Have regard to such other matters as the Board thinks fit.

"(3) In making a determination under subsection (2) of this section, the Board shall not take into account:

"(a) The same milksolids for more than one qualifying company; or

"(b) The same milksolids more than once for a qualifying company; or

"(c) Milksolids contained in milk or cream sold by the qualifying company for, or for resale for, human consumption in New Zealand in liquid form as milk or cream; or

"(d) Milksolids contained in export produce exported by the qualifying company pursuant to section 17 (1A) of this Act.

"(4) The Board is not required to issue shares to a qualifying company under this section unless the company provides the Board with such information as the Board requires to enable it to make a determination in respect of the company under subsection (2) of this section.

"15B. **Issue of additional shares**—(1) The Board may at any time, in accordance with its constitution and this section, issue shares (including shares paid up fully or partly from the reserves of the Board) to a qualifying company.

"(2) The Board may, by notice in writing to a qualifying company, require the company to hold such number of shares as is specified in the notice, being a number determined in accordance with the constitution by reference to the number of kilograms of milksolids paid for by the Board in respect of any qualifying export produce and contained in any qualifying dairy produce supplied or disposed of during a period or periods and in a ratio determined in accordance with the constitution by the Board.

"(3) Where the number of shares which a qualifying company is required to hold pursuant to subsection (2) of this section exceeds the number of shares then held by that qualifying company, the directors may issue those additional shares to the company.

"(4) As soon as practicable after issuing the shares under subsection (3) of this section, the Board must give notice in writing to the qualifying company stating the number of shares issued and the consideration payable for the shares.

"(5) The consideration for the issue of the shares is a debt due from the qualifying company to the Board.

"15C. **Limit on additional shares**—(1) Subject to subsection (2) of this section, the Board shall not alter the ratio referred to in section 15B (2) of this Act so as to increase the number of shares that a qualifying company may be required to hold without the approval of qualifying companies holding shares in accordance with section 2D of this Act.

"(2) The Board shall not alter the ratio referred to in section 15B (2) of this Act so as to increase the number of

shares a qualifying company may be required to hold by more than 50 percent of the smallest number of shares that the qualifying company was required to hold at any time during the 5 seasons immediately preceding the date of the alteration in respect of qualifying export produce paid for by the Board to the company and qualifying dairy produce disposed of by the company in the season immediately preceding the date of the alteration without the approval of qualifying companies holding shares in accordance with section 2D of this Act, which section shall apply as if, for the expression '75 percent', there were substituted the expression '90 percent'.

"15D. **Issue of shares during transition period**—(1) For the purposes of this section,—

" 'Additional allocation', in relation to a qualifying company, means the number of shares calculated in accordance with the following formulas, whichever is the higher:

$$a = b + c + d - f$$

$$a = b + d + e - f$$

where—

a is the additional allocation; and

b is the number of shares calculated on the basis of one share for every kilogram of milksolids contained in town milk manufactured by the company or any wholly-owned subsidiary of the company, not being a subsidiary that is a qualifying company, in the season ending on the close of the 31st day of May 1996; and

c is the number of shares that would be determined under section 15A of this Act if the reference in that section to the season ending on the close of the 31st day of May 1996 were a reference to whichever of the 3 seasons immediately preceding that date would, in applying that section, result in determining the highest number of shares; and

d is the higher of zero or the number of kilograms of own-supply milksolids of that company or any wholly-owned subsidiary of the company, not being a subsidiary that is a qualifying company, in the season ending on the close of the 31st day of May 1996 less the number of shares issued to the company under section 15A of this Act; and

e is the number of shares equal to the number obtained by multiplying the company's reserve contribution by the number of shares issued to all qualifying companies pursuant to section 15A of this Act; and

f is the number of shares issued to the company pursuant to section 15A of this Act:

" 'Reserve contribution', in relation to a qualifying company, means that company's contribution, as determined by the Board, to the growth in the Board's reserves during the period commencing on the 1st day of June 1980 and ending on the close of the 31st day of May 1996 expressed as a percentage of the total growth of the Board's reserves (including reserves that have been converted to capital) during that period:

" 'Transition period' means the period commencing on the 1st day of June 1996 and ending on the close of the 31st day of May 2001.

"(2) The Board may, and if the constitution so requires shall, issue to a qualifying company, during or in respect of the transition period and as shares that the company is required to hold under section 15B of this Act, a number of shares not exceeding the additional allocation for the company.

"(3) Shares issued pursuant to subsection (2) of this section shall be issued in accordance with the constitution.

"(4) Shares issued to a qualifying company under subsection (2) of this section shall be deemed to have been issued as fully paid.

"(5) The issue to a qualifying company of shares pursuant to this section does not limit to the additional allocation, the number of shares that the company may be required to hold pursuant to section 15B of this Act, where the number of such shares exceeds the additional allocation.

"15E. **Nominal value of shares**—(1) Shares issued by the Board must have a nominal value and different classes of shares may have different nominal values.

"(2) The nominal value of shares or any class of shares issued by the Board—

"(a) Shall be specified in the constitution:

"(b) May be altered by the Board in accordance with the constitution.

"(3) The Board may, with the approval pursuant to section 2D of this Act of qualifying companies holding shares, subdivide or consolidate shares having a nominal value.

"(4) Different classes of shares having different nominal values may be issued with the same rights except in respect of the amount payable on the surrender of the shares.

"15F. **Consideration for issue of shares**—The consideration for the issue of shares by the Board must be the nominal value of the shares.

"15G. **Rights and powers attaching to shares**—A share confers on the holder—

"(a) The right, subject to section 15X of this Act, to an equal share in dividends authorised by the Board; and

"(b) Any other right expressly conferred by this Act or by the constitution on qualifying companies holding shares.

"15H. **Types of shares**—Subject to the constitution, different classes of shares may be issued by the Board.

"15I. **Surrender of shares**—(1) Subject to this section, the Board may require a qualifying company holding shares to surrender any or all of the shares held by the company if—

"(a) The company ceases to be a qualifying company; or

"(b) The constitution permits the Board to require the surrender of the shares on grounds specified in the constitution; and

"(i) The surrender of the shares is on a ground specified in the constitution; and

"(ii) The Board has previously resolved that the surrender of the shares is in the best interests of the Board.

"(2) Shares that are surrendered may be paid for out of the assets of the Board.

"(3) The Board must not require the surrender of any shares unless the board of directors has resolved that the Board will, immediately after the surrender, satisfy the solvency test.

"(4) The directors who vote in favour of the surrender must sign a certificate stating that, in their opinion, the Board will, immediately after the surrender, satisfy the solvency test and the grounds for that opinion.

"(5) If, after the passing of the resolution and before the shares are surrendered, the board of directors ceases to be satisfied on reasonable grounds that the Board will, immediately after the surrender, satisfy the solvency test, any surrender of the shares is to be treated as a distribution that is

deemed not to have been authorised and the provisions of subsections (3) and (5) of section 56 of the Companies Act 1993 shall apply with such modifications as may be necessary.

"(6) Every director who fails to comply with subsection (4) of this section commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

"(7) Nothing in this section entitles the Board to require the surrender of shares in a company by reason only of the fact that—

"(a) The company is an amalgamating company (but not the amalgamated company) in an amalgamation referred to in section 15V (1) (a) of this Act; or

"(b) The shares in the company are acquired by a qualifying company in the manner described in section 15V (1) (b) of this Act; or

"(c) The business or property of the company is acquired by a qualifying company in the manner described in section 15V (1) (c) of this Act.

"15J. **Application of Companies Act 1993 to surrender of shares**—Sections 52 (4) and 56 of the Companies Act 1993 shall, with such modifications as may be necessary, apply to the surrender of shares under section 15I of this Act as if the surrender were a distribution.

"15K. **Consideration for surrender of shares**—(1) The consideration for the surrender of shares under this Act shall be determined in accordance with the following rules:

"(a) The consideration shall be the nominal value of the shares on the date on which the surrender takes effect or, if it is less than the nominal value of the shares, the amount paid up on the shares:

"(b) If the constitution includes a procedure for determining the consideration for the surrender of the shares then, if the consideration determined under the procedure is less than what the consideration would be if it were determined under paragraph (a), the consideration for the surrender of the shares shall be the consideration determined under the procedure:

"(c) Despite paragraphs (a) and (b), the Board and the qualifying company may agree on the consideration to be paid for the surrender of the shares if the amount agreed is less than what the consideration would be if it were determined under paragraph (a).

"(2) If the constitution includes a procedure for determining the consideration for the surrender of shares, it must also make

provision for the Board or the company, if either objects to the consideration determined in accordance with the procedure, to have the matter determined, in accordance with the procedure, by arbitration under the Arbitration Act 1908.

"(3) Notwithstanding anything in the constitution, in determining the consideration for the surrender of shares under any procedure contained in the constitution, no account is to be taken of—

"(a) The fact that the qualifying company may cease to be a qualifying company or, if it has ceased to be a qualifying company, of the reasons for it so ceasing; or

"(b) Any other factors or circumstances affecting the company.

"(4) The consideration for the surrender of shares is an unsecured debt owed to the qualifying company and, unless the constitution provides otherwise, is payable on the date on which the surrender takes effect.

"15L. **Reduction in amount payable on surrender of shares**—(1) Notwithstanding section 15K of this Act but subject to subsection (2) of this section, where the Board considers that the Board's right under section 15I (1) of this Act to require a qualifying company holding shares to surrender any or all of the shares held by the company has arisen for the purpose (whether or not it is one of a number of purposes) of enabling the qualifying company, or a qualifying company that is a related company, to derive a financial gain as a result of the issue during or in respect of the transition period of shares having different nominal values, the Board may reduce the amount of the consideration otherwise payable to the company under section 15K of this Act by such an amount as the Board considers appropriate in the circumstances.

"(2) The amount payable on the surrender of the shares must not be less than the nominal value for which shares are issued by the Board in the season in which the surrender takes effect.

"(3) In this section, 'related company' has the same meaning as in section 2 of the Companies Act 1955 or section 2 of the Companies Act 1993, as the case may require.

"15M. **Cancellation of shares surrendered**—(1) Subject to sections 15N to 15P of this Act, shares that are surrendered pursuant to section 15I of this Act are deemed to be cancelled immediately the surrender takes effect.

"(2) On cancellation of a share under this section,—

"(a) The rights and privileges attached to that share expire; and

"(b) The share may be reissued, as a share having a nominal value, in accordance with section 15B of this Act.

"15N. **Board may hold its own shares**—(1) For the purposes of this Act and the Income Tax Act 1994, shares that are surrendered under section 15I of this Act shall not be deemed to be cancelled under section 15M of this Act if—

"(a) The directors resolve that the shares concerned shall not be cancelled on surrender; and

"(b) The number of shares surrendered, when aggregated with shares held by the Board pursuant to this section at the time of the surrender which are of the same class, does not exceed 20 percent of the number of shares of that class previously issued by the Board, excluding shares deemed to be cancelled under section 15M of this Act; and

"(c) Any number of shares surrendered in excess of 25 percent of the 20 percent referred to in paragraph (b) of this subsection are required to have been surrendered only on grounds related to—

"(i) Companies ceasing to be qualifying companies; or

"(ii) The number of kilograms of milksolids paid for by the Board in respect of any qualifying export produce and contained in any qualifying dairy produce of qualifying companies for a season.

"(2) Shares surrendered pursuant to section 15I of this Act that, pursuant to this section, are not deemed to be cancelled shall be held by the Board in itself.

"(3) A share that the Board holds in itself pursuant to subsection (2) of this section may be cancelled by the directors of the Board resolving that the share is cancelled; and the share shall be deemed to be cancelled on the making of such a resolution.

"15O. **Rights and obligations of surrendered shares held by Board suspended**—(1) The rights and obligations attaching to a share that the Board holds in itself pursuant to section 15N of this Act shall not be exercised by or against the Board while it holds the share.

"(2) Without limiting subsection (1) of this section, while the Board holds a share in itself pursuant to section 15N of this Act, the Board shall not pay or receive any dividend authorised or payable in respect of the share.

"15P. **Reissue of shares held by Board**—(1) A share held by the Board in itself may be transferred only to a qualifying company and, in any such case, section 15F of this Act shall apply to the transfer of the share as if the transfer were the issue of a share under section 15B of this Act.

"(2) Subject to subsection (1) of this section, the transfer of a share held by the Board in itself shall not be subject to any provision in this Act or the constitution relating to the issue of shares, except to the extent the constitution expressly applies that provision.

"15Q. **Shares not transferable**—Except as provided in section 15P of this Act, shares and the rights attached to shares, whether prospective, contingent, or otherwise, are not capable of—

"(a) Being transferred, assigned, mortgaged, pledged, hypothecated, or otherwise alienated; or

"(b) Passing by operation of law.

"15R. **Secretary to keep register of qualifying companies**—The Secretary shall, in accordance with the constitution, keep a register of qualifying companies holding shares and the number of shares held by each of them.

"15S. **Share register to be available for inspection**—(1) Any person may, without charge, inspect the share register at the Board's principal office during normal business hours.

"(2) Any person may obtain a copy of the share register or any part of it on payment of any reasonable charge imposed by the Board and, for that purpose, the Board may charge for—

"(a) Supplying a copy of the share register or any part of it; or

"(b) Allowing the use of equipment under the Board's control for copying the share register or any part of it.

"15T. **Liability of qualifying companies holding shares**—Sections 97 (except subsection (2)(c)) and 100 of the Companies Act 1993 shall apply, with such modifications as may be necessary, to qualifying companies holding shares.

"15U. **Share certificates**—The Board shall, in accordance with the constitution, issue share certificates to qualifying companies holding shares.

"15V. **Amalgamations and acquisitions**—(1) This section applies in any case where—

"(a) Two or more qualifying companies amalgamate pursuant to Part VA of the Companies Act 1955 or

Part XIII of the Companies Act 1993, as the case may be; or

"(b) A qualifying company acquires all the shares that carry voting rights in a company that, before the acquisition, was a qualifying company; or

"(c) A qualifying company acquires the whole or substantially the whole of the business or property of another qualifying company from the liquidator of the other qualifying company in consideration of shares, policies, or other like interests pursuant to section 24A of the Co-operative Dairy Companies Act 1949.

"(2) In this section, the terms 'predecessor' and 'successor' have the following meanings:

"(a) In the case of an amalgamation referred to in subsection (1) (a) of this section, 'predecessor' means an amalgamating qualifying company, not being the amalgamated company that results from the amalgamation, that is involved in the amalgamation, and 'successor' means the amalgamated company:

"(b) In the case of an acquisition referred to in subsection (1) (b) of this section, 'predecessor' means the company the shares in which are acquired by the qualifying company, and 'successor' means the qualifying company:

"(c) In the case of an acquisition referred to in subsection (1) (c) of this section, 'predecessor' means the company the whole or substantially the whole of the business or property of which is acquired by the qualifying company, and 'successor' means the qualifying company.

"(3) In any case to which this section applies, a successor is entitled, by giving notice in writing to the Board—

"(a) To acquire—

"(i) The shares or rights to shares held by its predecessor; or

"(ii) The rights to an issue of shares to which its predecessor would have been entitled under section 15A of this Act if it were a qualifying company on the coming into force of that section:

"(b) To the additional allocation (within the meaning of section 15D of this Act) of its predecessor in respect of which no shares have already been issued to that predecessor:

"(c) To exercise the rights and powers attached to, and obtain the benefits arising from, any such shares, or rights to shares, or issue of shares, or additional allocation of shares:

"(d) To treat the qualifying export produce, qualifying dairy produce, and town milk of its predecessor for any period preceding the amalgamation or acquisition and not already taken into account for the purposes of the issue of shares under this Act, as its own:

"(e) For the purposes of section 2D of this Act, to treat the qualifying milksolids, qualifying dairy produce, and qualifying export produce of its predecessor on the day preceding the amalgamation or acquisition, as its own.

"(4) Where a successor gives a notice in relation to any matter referred to in any of paragraphs (a) to (e) of subsection (3) of this section, the rights of its predecessor in relation to that matter shall cease with effect on and from the date on which the notice is given.

"(5) Section 15Q of this Act does not apply to any amalgamation or acquisition referred to in subsection (1) of this section.

"(6) The Secretary shall amend the share register to record any change in shareholding as a result of the exercise by a successor of any of the rights conferred by subsection (3) of this section.

"15W. **Application of section 15V to amalgamations and acquisitions before commencement date**—(1) In this section, the term 'co-operative dairy company' means a registered co-operative dairy company within the meaning of section 2 of this Act (as in force immediately before the commencement date).

"(2) Where, during the period commencing on the 1st day of June 1996 and ending with the close of the day immediately preceding the commencement date,—

"(a) Two or more co-operative dairy companies amalgamated pursuant to Part VA of the Companies Act 1955 or Part XIII of the Companies Act 1993, as the case may be; or

"(b) A co-operative dairy company acquired all the shares that carry voting rights in another co-operative dairy company; or

"(c) A co-operative dairy company acquired the whole or substantially the whole of the business or property

of another co-operative dairy company from the liquidator of the other co-operative dairy company in consideration of shares, policies, or other like interests pursuant to section 24A of the Co-operative Dairy Companies Act 1949,—

then section 15V of this Act shall apply in respect of the amalgamation or acquisition as if it had taken place on the commencement date and as if the companies were qualifying companies.

"15X. **Dividends**—(1) Subject to this section, the Board may at any time pay a dividend from its trading surplus or financial reserves to qualifying companies holding shares.

"(2) The Board must not pay a dividend unless the board of directors has resolved that the Board will, immediately after the payment of the dividend, satisfy the solvency test.

"(3) The directors who vote in favour of the payment of the dividend must sign a certificate stating that, in their opinion, the Board will, immediately after the payment, satisfy the solvency test and grounds for that opinion.

"(4) The Board must not pay a dividend—

"(a) In respect of some but not all the shares in a class; or

"(b) That is of a greater value per share in respect of some shares than in respect of other shares in that class—

unless the amount of the dividend in respect of a share is in proportion to the amount paid up on the share.

"(5) The provisions of section 56 of the Companies Act 1993 shall apply to the payment of a dividend by the Board with such modifications as are necessary.

"(6) The constitution may include provisions relating to dividends, including provisions conferring on the Board—

"(a) Rights to suspend the payment of dividends:

"(b) A lien over the amount of any dividend due and payable by the Board for the payment of money owing to the Board by a qualifying company holding shares.

"(7) A qualifying company holding shares may, by notice in writing to the Board signed by or on behalf of the qualifying company, waive its entitlement to receive payment of a dividend.

"(8) Nothing in this section limits section 28 or section 28A of this Act.

"(9) Every director who fails to comply with subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

"15Y. **Meetings of qualifying companies holding shares**—The constitution shall include provisions relating to meetings of qualifying companies holding shares, including provisions—

"(a) As to the circumstances when qualifying companies holding shares may call meetings:

"(b) As to the matters that may be considered at such meetings, being matters relating only to—

"(i) The issue and holding of shares, dividends payable in respect of shares, and other matters contemplated by this Act relating to shares:

"(ii) The use by the Board in carrying out its functions of capital raised, or to be raised, by the issue of shares:

"(iii) Amendments to the constitution or the adoption of a new constitution:

"(iv) Matters that require the approval of qualifying companies holding shares under section 2D of this Act:

"(c) As to the content and timing of a notice which a qualifying company holding shares may give to the Board for the holding of such a meeting:

"(d) As to the steps to be taken by the Board on receiving any such notice, including the form, content, and timing of any notices to be given by the Board to qualifying companies holding shares:

"(e) Providing for resolutions in writing to be signed in lieu of a meeting:

"(f) As to the chairing and conduct of meetings of qualifying companies holding shares, including adjournments of such meetings:

"(g) As to voting at such meetings, including the requirements for a quorum, voting by representatives, and postal voting.

"15Z. **Resolutions of qualifying companies holding shares**—No resolution passed by qualifying companies holding shares is binding on the Board unless it is a resolution on a matter that requires approval under section 2D of this Act.

"15ZA. **Management review by qualifying companies holding shares**—(1) Notwithstanding anything in this Act or the constitution, the chairperson of a meeting of qualifying companies holding shares must allow a reasonable opportunity for representatives of such qualifying companies at the meeting to question, discuss, or comment on the management by the

board of directors in relation to a matter referred to in section 15Y (b) of this Act.

"(2) Notwithstanding anything in this Act or the constitution but subject to subsection (3) of this section, a meeting of qualifying companies holding shares may pass a resolution under this section relating to such management by the board of directors.

"(3) A resolution passed pursuant to subsection (2) of this section is not binding on the board of directors.

"15ZB. **Annual meeting of qualifying companies holding shares**—(1) The board of directors must call an annual meeting of qualifying companies holding shares to be held—

"(a) Once in each calendar year; and

"(b) Not later than 6 months after the 31st day of May in each year; and

"(c) Not later than 15 months after the previous annual meeting.

"(2) The Board must hold the meeting on the date on which it is called to be held.

"15ZC. **Special meetings of qualifying companies holding shares**—A special meeting of qualifying companies holding shares and entitled to vote on a matter—

"(a) May be called at any time by—

"(i) The board of directors; or

"(ii) A person who is authorised by the constitution to call the meeting:

"(b) Must be called by the board of directors on the written request of qualifying companies holding shares whose qualifying milksolids during the most recent complete season was, in the Board's opinion, more than 5 percent of the aggregate quantity of the qualifying milksolids of all qualifying companies holding shares for the period.

"15ZD. **Dissolution of Board**—(1) The Board shall not be dissolved except by an Act of Parliament.

"(2) The provisions contained in the Fifth Schedule to this Act shall apply in relation to the dissolution of the Board.

"15ZE. **Taxation**—(1) The issue by the Board of shares to a qualifying company under section 15A or section 15D of this Act—

"(a) Does not constitute a dutiable gift for the purposes of the Estate and Gift Duties Act 1968:

"(b) Is not a dividend for the purposes of section CF 2 of the Income Tax Act 1994:

"(c) Is not assessable income of the qualifying company for the purposes of paragraph (a) or paragraph (d) of section BB 4 of the Income Tax Act 1994.

"(2) For the purposes of the definitions of the terms 'available subscribed capital' and 'bonus issue' in section OB 1 of the Income Tax Act 1994, in respect of the issue of shares by the Board under sections 15A and 15D of this Act, the Board and any company that is deemed pursuant to Part II of the Fifth Schedule to this Act to come into existence on the dissolution of the Board,—

"(a) Shall be deemed to have received, on the 1st day of June 2001, an aggregate amount of consideration of $140,000,000; and

"(b) Shall be deemed to have received, on each succeeding 1st day of June up to and including the 1st day of June 2006, a further aggregate amount of consideration of $140,000,000; and

"(c) Shall be treated as not having received any other amount of consideration in respect of the issue of any of such shares.

"(3) Notwithstanding sections OD 3 (1) and OD 3 (2) of the Income Tax Act 1994, for the purposes of that Act, the voting interest in the Board of a qualifying company at any time equals that qualifying company's qualifying milksolids during the most recent complete season before that time expressed as a percentage of the aggregate quantity of the qualifying milksolids of all qualifying companies holding shares for that period.

"(4) In applying subsection (3) of this section,—

"(a) In any case to which section 15V of this Act applies (other than as a result of the application of section 15W of this Act), the qualifying milksolids, qualifying dairy produce, and qualifying export produce of a predecessor on the day preceding the amalgamation or acquisition shall be deemed to be treated as the qualifying milksolids, qualifying dairy produce, and qualifying export produce of its successor:

"(b) In any case to which section 15W of this Act applies, the qualifying milksolids, qualifying dairy produce, and qualifying export produce of a predecessor on the commencement date shall be deemed to be treated as the qualifying milksolids, qualifying dairy

produce, and qualifying export produce of its successor (determined as if the amalgamation or acquisition had taken place on the commencement date and as if the companies were qualifying companies).

"(5) For the purposes of the Income Tax Act 1994, a qualifying company to which the Board issues shares under section 15A of this Act is deemed to have—

"(a) Held those shares at all times prior to the issue of those shares; and

"(b) Subject to section OD 5 (5) of the Income Tax Act 1994, held the voting interest determined pursuant to subsections (3) and (4) of this section on the commencement date at all times prior to the commencement date.

"(6) If the Board is, on its dissolution, deemed pursuant to Part II of the Fifth Schedule to this Act to be a company registered under the Companies Act 1993, then, for the purposes of the Inland Revenue Acts (within the meaning of section 3 (1) of the Tax Administration Act 1994),—

"(a) On and from the date on which the Board is deemed to be a company, the Board and the company shall be deemed to be the same person; and

"(b) All transactions entered into by, and acts of, the Board before that date shall be deemed to have been entered into by, or to be acts of, the company and to have been entered into or performed by the company at the time they were entered into or performed by the Board.

"15ZF. **Application of section 17A of Judicature Act 1908**—Nothing in section 17A of the Judicature Act 1908 (as inserted by section 2 of the Judicature Amendment Act 1993) applies to the Board."

10. Consequential repeal—Section 9 of the Dairy Board Amendment Act 1992 is hereby consequentially repealed.

11. Rights of registered qualifying persons under former Part IA to cease—Notwithstanding section 20 of the Acts Interpretation Act 1924, any rights or interests of a person who, before the commencement date, was a registered qualifying person within the meaning of section 2 of the principal Act (as then in force), being rights or interests under or conferred by Part IA of the principal Act (as then in force), cease on the commencement date.

12. Establishing value for components of milk—Section 26 (2) of the principal Act (as substituted by section 7 (1) of the Dairy Board Amendment Act 1988) is hereby amended by omitting the word "consent", and substituting the word "approval".

13. Annual trading surpluses—The principal Act is hereby amended by repealing section 28 (as substituted by section 7 (1) of the Dairy Board Amendment Act 1988), and substituting the following section:

"28. (1) As soon as practicable after the end of every season, the Board shall assess its trading balance for the season.

"(2) Subject to this section, if the balance shows a surplus, the Board may distribute all or any part of it to manufacturers of dairy produce from whom the Board acquired dairy produce (or, as the case requires, the components concerned, or dairy produce from which the products concerned were manufactured) during the season to which the surplus relates.

"(3) In determining whether or not to distribute to manufacturers of dairy produce any part of a surplus, the Board shall take into account—

"(a) The desirability of the Board having financial reserves adequate for the performance and exercise of its functions and powers:

"(b) The profitability and economic position of the dairy farming industry at the time.

"(4) Any surplus the Board decides to distribute shall be distributed—

"(a) To manufacturers that are qualifying companies holding shares; or

"(b) To manufacturers that are qualifying companies holding shares and to manufacturers that are not qualifying companies holding shares—

on any basis the Board thinks fair and equitable."

14. Delegation of powers of Board—(1) The principal Act is hereby amended by repealing section 48A (as inserted by section 10 (1) of the Dairy Board Amendment Act 1980), and substituting the following section:

"48A. (1) Subject to subsection (2) of this section, the Board may, either generally or in relation to a particular matter, delegate to a director or officer or employee of the Board any of the functions and powers of the Board under this Act, including the power to execute deeds, but not including this power of delegation.

"(2) In any case where the Board has, pursuant to subsection (1) of this section, delegated any functions or powers to the chief executive of the Board, the chief executive may, with the prior written approval of the Board, delegate such of those functions or powers as the Board approves to any officer or employee of the Board.

"(3) A delegation under this section may be made to—

"(a) A specified person; or

"(b) Persons of a specified class; or

"(c) The holder for the time being of a specified office; or

"(d) The holders for the time being of a specified class of offices.

"(4) Subject to any general or special directions or conditions given or imposed by the Board or the chief executive, as the case may be, the person to whom any functions or powers are delegated may exercise them in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

"(5) Every person purporting to act pursuant to a delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

"(6) A delegation under this section may be revoked at any time.

"(7) The delegation of a power or function under this section does not—

"(a) Prevent the Board or the chief executive, as the case may be, exercising the same power or function; or

"(b) Affect the responsibility of the Board for the actions of the person acting under the delegation."

(2) Section 10 (1) of the Dairy Board Amendment Act 1980 is hereby consequentially repealed.

15. New sections inserted—The principal Act is hereby amended by inserting, after section 55, the following sections:

"55A. **Board records**—The Board must keep the following documents at the Board's principal office:

"(a) The constitution of the Board:

"(b) Minutes of all meetings and resolutions of qualifying companies holding shares within the last 7 years:

"(c) An interests register:

"(d) Minutes of all meetings and resolutions of directors, directors' committees, and committees appointed

pursuant to section 13 of this Act within the last 7 years:

"(e) Certificates given by directors under this Act within the last 7 years:

"(f) The full names and addresses of the current directors:

"(g) Copies of all written communications to all qualifying companies holding shares in their capacities as such during the last 7 years; including annual reports made under section 67A of this Act:

"(h) Copies of all financial statements and group financial statements required to be completed by this Act or the Financial Reporting Act 1993 for the last 7 completed seasons:

"(i) The accounting records required by section 55C of this Act for the current season and for the last 7 completed seasons:

"(j) The share register.

"55B. **Inspection of records by directors**—(1) Subject to subsection (2) of this section, every director is entitled, on giving reasonable notice, to inspect any of the documents referred to in section 55A of this Act—

"(a) In written form; and

"(b) Without charge; and

"(c) At a reasonable time specified by the director.

"(2) The High Court may, on application by the Board, if it is satisfied that—

"(a) It would not be in the Board's interests for a director to inspect the documents; or

"(b) The proposed inspection is for a purpose that is not properly connected with the director's duties,—

direct that the documents need not be made available for inspection or limit the inspection of them in any manner it thinks fit.

"55C. **Accounting records to be kept**—(1) The board of directors must cause accounting records to be kept that—

"(a) Correctly record and explain the transactions of the Board; and

"(b) Will at any time enable the financial position of the Board to be determined with reasonable accuracy; and

"(c) Will enable the directors of the Board to ensure that the financial statements of the Board comply with section 10 of the Financial Reporting Act 1993 and

any group financial statements comply with section 13 of that Act; and

"(d) Will enable the financial statements of the Board to be readily and properly audited.

"(2) Without limiting subsection (1) of this section, the accounting records must contain—

"(a) Entries of money received and spent each day and the matters to which it relates:

"(b) A record of the assets and liabilities of the Board:

"(c) A record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices:

"(d) A record of stock held at the end of the season together with records of any stocktakings during the season:

"(e) A record of services provided and relevant invoices.

"(3) The accounting records must be kept—

"(a) In written form and in English; or

"(b) In a form or manner in which they are easily accessible and convertible into written form in English."

16. Board to prepare financial statements—(1) The principal Act is hereby amended by repealing section 66 (as substituted by section 12 of the Dairy Board Amendment Act 1977 and amended by section 2 of the Company Law Reform (Transitional Provisions) Act 1994), and substituting the following section:

"66. (1) As soon as practicable after the 31st day of May but not later than the 31st day of October in each year, the Board shall prepare—

"(a) Financial statements for the Board for the season ending on that 31st day of May; and

"(b) Financial statements for the Board and every subsidiary (within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be,) of the Board for the season ending on that 31st day of May.

"(2) The financial statements of the Board referred to in subsection (1) (a) of this section shall comply, and be audited in accordance, with the Financial Reporting Act 1993 as if the Board were a reporting entity within the meaning of that Act.

"(3) The financial statements referred to in subsection (1) (b) of this section shall comply, and be audited in accordance, with the Financial Reporting Act 1993 as if the Board were a

reporting entity and the Board and its subsidiaries were a group within the meaning of that Act."

(2) The Company Law Reform (Transitional Provisions) Act 1994 is hereby consequentially amended by repealing so much of the First Schedule as relates to section 66 of the principal Act.

17. Annual report and statements to be laid before House of Representatives—Section 67A of the principal Act (as substituted by section 12 of the Dairy Board Amendment Act 1977 and amended by sections 18 and 19 (2) of the Dairy Board Amendment Act 1992), is hereby amended by adding the following subsection:

"(3) The report referred to in subsection (1) of this section shall include the matters required to be included in the annual report of a company by paragraphs (e), (f), and (g) of section 211 (1) of the Companies Act 1993, and those paragraphs shall apply as if references to—

"(a) An accounting period were references to the season to which the report of the Board relates; and

"(b) A company were references to the Board; and

"(c) A director or former director were references to a director or former director of the Board."

18. New Fourth Schedule added to principal Act—The principal Act is hereby amended by adding the Fourth Schedule set out in the First Schedule to this Act.

19. New Fifth Schedule added to principal Act—The principal Act is hereby amended by adding the Fifth Schedule set out in the Second Schedule to this Act.

20. Amendments to Income Tax Act 1994—(1) Section OB 1 of the Income Tax Act 1994 (in this section referred to as the principal Act) is hereby amended by repealing paragraph (d) of the definition of the term "special corporate entity", and substituting the following paragraph:

"(d) Any statutory producer board (other than the New Zealand Dairy Board on and after the coming into force of section 9 of the Dairy Board Amendment Act (No. 2) 1996):".

(2) Section CF 3 (1) (d) (i) of the principal Act (as substituted by section 51 of the Co-operative Companies Act 1996) is hereby amended by inserting, after the words "the Co-

operative Companies Act 1996", the words "or section 15N of the Dairy Board Act 1961".

(3) Section CF 3 (3) (b) of the principal Act is hereby amended by inserting, after the word "companies", the words "and is not the New Zealand Dairy Board".

(4) Section CF 3 (3A) (b) of the principal Act (as inserted by section 51 of the Co-operative Companies Act 1996) is hereby amended by inserting, after the word "companies", the words "or is the New Zealand Dairy Board".

(5) Section CF 3 (14) of the principal Act is hereby amended by repealing paragraph (a) of the definition of the term "non-participating redeemable share", and substituting the following paragraph:

"(a) The share is issued in accordance with the company's constitution or by the New Zealand Dairy Board pursuant to Part IA of the Dairy Board Act 1961, as the case may be, on terms whereby the share is required or permitted to be redeemed or repaid (including, in the case of a co-operative company or the New Zealand Dairy Board, upon surrender to the company or the Board) before liquidation of the company or the dissolution of the Board; and".

(6) Section CF 3 (14) of the principal Act is hereby further amended by adding to paragraph (b) (i) of the definition of the term "non-participating redeemable share", the following sub subparagraph:

"(F) Part IA of the Dairy Board Act 1961; or".

(7) Section CF 3 (14) of the principal Act is hereby further amended by inserting in paragraph (d) of the definition of the term "non-participating redeemable share", after the word "companies", the words "or is the New Zealand Dairy Board".

SCHEDULES

Section 18

FIRST SCHEDULE

NEW FOURTH SCHEDULE TO PRINCIPAL ACT

Section 3AD

"FOURTH SCHEDULE

PROVISIONS APPLYING TO DIRECTORS OF BOARD

1. Duty of directors to act in good faith and in accord with functions and powers of Board—A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be in accord with the functions and powers of the Board.

Cf. 1993, No. 105, s. 131

2. Exercise of powers in relation to employees—(1) Nothing in clause 1 of this Schedule limits the power of a director to make provision for the benefit of employees of the Board in connection with the Board ceasing to carry on the whole or part of its business.

(2) In subclause (1) of this clause,—

"Employees" includes former employees and the dependants of employees or former employees; but does not include an employee or former employee who is or was a director:

"Board" includes a subsidiary of the Board.

Cf. 1993, No. 105, s. 132

3. Powers to be exercised for proper purpose—A director must exercise a power for a proper purpose.

Cf. 1993, No. 105, s. 133

4. Directors to comply with Act and constitution—A director must not act, or agree to the Board acting, in a manner that contravenes this Act or the constitution.

Cf. 1993, No. 105, s. 134

5. Reckless trading—A director must not—

(a) Agree to the business of the Board being carried on in a manner likely to create a substantial risk of serious loss to the Board's creditors; or

(b) Cause or allow the business of the Board to be carried on in a manner likely to create a substantial risk of serious loss to the Board's creditors.

Cf. 1993, No. 105, s. 135

6. Duty in relation to obligations—A director must not agree to the Board incurring an obligation unless the director believes at that time on reasonable grounds that the Board will be able to perform the obligation when it is required to do so.

Cf. 1993, No. 104, s. 136

7. Director's duty of care—A director, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation,—

(a) The nature of the Board; and

(b) The nature of the decision; and

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FOURTH SCHEDULE—*continued*

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(c) The position of the director and the nature of the responsibilities undertaken by him or her.

Cf. 1993, No. 105, s. 137

8. Use of information and advice—(1) Subject to subclause (2) of this clause, a director, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given, by any of the following persons:

(a) An employee of the Board whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned:

(b) A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence:

(c) Any other director or committee of directors or committee appointed under section 13 of this Act upon which the director did not serve in relation to matters within the director's or committee's designated authority.

(2) Subclause (1) of this clause applies to a director only if the director—

(a) Acts in good faith; and

(b) Makes proper inquiry where the need for inquiry is indicated by the circumstances; and

(c) Has no knowledge that such reliance is unwarranted.

Cf. 1993, No. 105, s. 138

9. Meaning of "interested"—(1) Subject to subclause (2) of this clause, for the purposes of this Schedule, a director is interested in a transaction to which the Board is a party if, and only if, the director—

(a) Is a party to, or will or may derive a material financial benefit from, the transaction; or

(b) Has a material financial interest in another party to the transaction; or

(c) Is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is a wholly-owned subsidiary of the Board; or

(d) Is the parent, child, or spouse of another party to, or person who will or may derive a material financial benefit from, the transaction; or

(e) Is otherwise directly or indirectly materially interested in the transaction.

(2) For the purposes of this Schedule,—

(a) A director is not interested in a transaction to which the Board is a party if the transaction comprises only the giving by the Board of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the Board for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security:

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FOURTH SCHEDULE—*continued*

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(b) A director is not interested in a transaction or proposed transaction between the Board and a co-operative company entered into or to be entered into in the ordinary course of business of the Board by reason only of being a director, officer, trustee, or supplying shareholder of that company.

Cf. 1993, No. 105, s. 139

10. Disclosure of interest—(1) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Board, cause to be entered in the interests register and disclose to the board of directors,—

(a) If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or

(b) If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.

(2) For the purposes of subclause (1) of this clause, a general notice given to the board of directors to the effect that a director is a shareholder, director, officer, or trustee of a person named in the notice and is to be regarded as interested in any transaction which may, after the date on which the notice is given to the board of directors, be entered into by the Board with that person, is a sufficient disclosure of interest in relation to that transaction.

(3) A failure by a director to comply with subclause (1) of this clause does not affect the validity of a transaction entered into by the Board or the director.

(4) Every director who fails to comply with subclause (1) of this clause commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

Cf. 1993, No. 103, s. 140

11. Avoidance of transactions—(1) A transaction entered into by the Board in which a director is interested may be avoided by the Board at any time before the expiration of 3 months after the transaction is disclosed to the board of directors.

(2) A transaction cannot be avoided if the Board receives fair value under it.

(3) For the purposes of subclause (2) of this clause, the question whether the Board receives fair value under a transaction is to be determined on the basis of the information known to the Board and to the interested director at the time the transaction is entered into.

(4) If a transaction is entered into by the Board in the ordinary course of its business and on usual terms and conditions, the Board is presumed to receive fair value under the transaction.

(5) For the purposes of this clause,—

(a) A person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction was entered into has the onus of establishing fair value; and

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FOURTH SCHEDULE—*continued*

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(b) In any other case, the Board has the onus of establishing that it did not receive fair value.

(6) A transaction in which a director is interested can only be avoided on the ground of the director's interest in accordance with this clause.

Cf. 1998, No. 105, s. 141

12. Effect on third parties—The avoidance of a transaction under clause 11 of this Schedule does not affect the title or interest of a person in or to property which that person has acquired if the property was acquired—

(a) From a person other than the Board; and

(b) For valuable consideration; and

(c) Without knowledge of the circumstances of the transaction under which the person referred to in paragraph (a) of this clause acquired the property from the Board.

Cf. 1998, No. 105, s. 142

13. Application of clauses 10 and 11 in certain cases—Nothing in clauses 10 and 11 of this Schedule applies in relation to—

(a) Remuneration or any other benefit given to a director in his or her capacity as a director; or

(b) An indemnity given to or insurance provided for a director in his or her capacity as a director.

Cf. 1998, No. 105, s. 143

14. Interested director may vote—Subject to any rules adopted by the Board for the purposes of this clause, a director who is interested in a transaction entered into, or to be entered into, by the Board, may—

(a) Vote on a matter relating to the transaction; and

(b) Attend a meeting of the board of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and

(c) Sign a document relating to the transaction on behalf of the Board; and

(d) Do any other thing in his or her capacity as a director in relation to the transaction—

as if the director were not interested in the transaction.

Cf. 1998, No. 105, s. 144

15. Use of Board information—(1) A director who has information in his or her capacity as a director or employee of the Board, being information that would not otherwise be available to him or her, must not disclose that information to any person, or make use of or act on the information, except—

(a) For the purposes of the Board; or

(b) As required by law; or

(c) In accordance with subclause (2) of this clause; or

(d) In complying with clause 10 of this Schedule.

FIRST SCHEDULE—*continued*

NEW FOURTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FOURTH SCHEDULE—*continued*

PROVISIONS APPLYING TO DIRECTORS OF BOARD—*continued*

(2) A director may disclose, make use of, or act on the information if—

(a) The director is first authorised to do so by the board of directors; and

(b) The disclosure, use, or act in question will not, or will not be likely to, prejudice the Board.

Cf. 1993, No. 105, s. 145

16. Duties owed to Board—The duties of the directors of the Board set out in this Schedule are owed to the Board and not to qualifying companies holding shares."

Section 19

SECOND SCHEDULE

NEW FIFTH SCHEDULE TO PRINCIPAL ACT

Section 15ZD (2)

"FIFTH SCHEDULE

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD

PART I

INTERPRETATION

1. Interpretation—In this Schedule, unless the context otherwise requires,—

"Assets" in relation to the Board, means property of all kinds, both real and personal, of whatever nature and wherever situated; and (without limiting the generality of the foregoing) includes—

(a) Property over which the Board has a power of disposition or appointment; and

(b) Any copyright, patent, registered design, trademark, knowhow, or other intellectual property owned by the Board; and

(c) Choses in action and money owned by or vested in the Board; and

(d) The Board's goodwill; and

(e) Rights, interests, and claims in or to property of every kind,—

(i) Whether or not arising from, accruing under, created or evidenced by, or the subject of any instrument or other document; and

(ii) Whether liquidated or unliquidated; and

(iii) Whether actual, contingent, prospective, or vested,—

exercisable by or vested in, or capable of being made by, the Board:

"Court" means the High Court:

"Instrument" includes—

(a) An instrument of any form or kind that creates, evidences, modifies, or extinguishes rights, interests, or liabilities, or would do so if it or a copy of it were lodged, filed, or registered under any enactment; and

(b) A judgment, order, or process of a court:

"Liabilities", in relation to the Board, means liabilities, debts, charges, duties, and obligations of the Board of every description (whether

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART I—*continued*

INTERPRETATION—*continued*

present or future, actual or contingent, and whether payable or to be observed or performed in New Zealand or elsewhere):

"Rights", in relation to the Board, means all rights, powers, privileges, and immunities of the Board, whether actual, contingent, or prospective:

"Undertaking", in relation to the Board, means the assets, rights, and liabilities of the Board.

PART II

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION

1. Application of this Part—This Part of this Schedule shall apply in relation to the dissolution of the Board only if the Board does not adopt, under Part III of this Schedule, a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon the dissolution of the Board.

2. Board deemed to be a company on dissolution—(1) The Board shall, upon its dissolution, be deemed to be a company registered under the Companies Act 1993 under the name "The New Zealand Dairy Board Limited" (in this Part of this Schedule referred to as 'the company').

(2) As soon as practicable after the deemed registration of the company, the Registrar of Companies shall issue a certificate of incorporation for the company.

(3) The certificate of incorporation is conclusive evidence that the company was, on the date of dissolution of the Board, registered as a company under the Companies Act 1993.

3. Effect of registration as company—(1) The company so registered shall be the same body corporate as the body established under section 3 of this Act.

(2) The deemed registration of the company does not—

(a) Create a new legal entity; or

(b) Prejudice or affect the identity of the body corporate constituted by the company or its continuity as a legal entity; or

(c) Affect the property, rights, or obligations of the company; or

(d) Affect proceedings by or against the company.

(3) Proceedings that could have been commenced or continued by or against the Board before its dissolution may be commenced or continued by or against the company.

(4) The deemed registration of the company does not affect rights, interests, liabilities, or obligations existing immediately before the dissolution of the Board.

(5) On the deemed registration of the company, the undertaking of the Board existing immediately before its dissolution shall continue to belong to and vest in the company without transfer, disposition, assumption or distribution.

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART II—*continued*

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

(6) All transactions entered into by, and acts of, the Board before the dissolution of the Board shall be deemed to have been entered into by, or to be those of, the company and to have been entered into or performed by the company at the time when they were entered into or performed by the Board.

4. Constitution—The Board may, at any time prior to its dissolution, and with the approval, pursuant to section 2D of this Act, of qualifying companies holding shares, prescribe a form of constitution for the company, which constitution shall, upon the registration of the company, be the constitution of the company.

5. Shares—(1) The number of shares in the Board immediately before the dissolution (excluding shares purchased by the Board pursuant to clause 9 of this Part of this Schedule and not held by the Board under section 15N of this Act) shall be the number of shares in the company and those shares shall, subject to the constitution of the company, confer on the holders the rights attaching to shares pursuant to the Companies Act 1993.

(2) Notwithstanding section 38 of the Companies Act 1993, each qualifying company, not being a qualifying company that has required the Board to purchase the shares held by that company pursuant to clause 9 of this Part of this Schedule, that was the holder of shares immediately before the dissolution of the Board shall be the holder of the same number of shares with the same nominal value in the company.

(3) The shares in the company shall have attached to them the same liabilities as the shares had immediately before the dissolution of the Board.

6. Directors—(1) The persons holding office as directors of the Board immediately before the dissolution of the Board shall be the directors of the company and shall hold office for the balance of the terms for which those persons held office as directors of the Board or until they vacate office in accordance with the constitution of the company, whichever is earlier.

(2) Within 20 working days after the registration of the company, the board of the company must deliver to the Registrar of Companies for registration under the Companies Act 1993 a notice containing the name and residential address of every person who is a director of the company.

7. Annual return—Within 20 working days after the registration of the company, the board of the company must deliver to the Registrar of Companies for registration under the Companies Act 1993 an annual return for the company that, so far as practicable, contains the information specified in the Fourth Schedule to that Act.

8. Registration as a co-operative company—(1) If the Registrar of Companies is satisfied that the constitution of the company prescribed pursuant to clause 4 of this Schedule would entitle the company to be

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART II—*continued*

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

registered as a co-operative company under the Co-operative Companies Act 1996, the Registrar shall—

(a) Register the company as a co-operative company under that Act; and

(b) Issue a certificate of registration under that Act.

(2) The company shall, on registration as a co-operative company under the Co-operative Companies Act 1996, be deemed, with effect on and from the date of its registration as a company, to have been registered as a co-operative company under that Act.

(3) The certificate of registration is conclusive evidence that the company was, on the date of its registration as a company, registered as a co-operative company under the Co-operative Companies Act 1996.

9. Purchase of shares by Board— (1) As soon as practicable after the date on which this Schedule comes into force, the Board shall include in its constitution—

(a) A procedure that, on the coming into force of any Act of Parliament dissolving the Board, will enable a qualifying company holding shares to require the Board to purchase the shares held by the company on the date immediately preceding the date of dissolution; and

(b) A procedure for establishing a fair and reasonable price for the purchase of the shares.

(2) Subject to any deduction for any amount due and unpaid on the shares, the Board shall pay the same price for all shares of the same class that the Board is required to purchase from qualifying companies holding shares.

(3) Nothing in subclause (2) of this clause limits or affects clause 10 of this Part of this Schedule.

10. Court may exempt Board from obligation to purchase shares— (1) The Board may apply to the Court for an order exempting the Board from an obligation to purchase the shares of a qualifying company pursuant to a procedure included in the constitution of the Board under clause 9 of this Schedule on the grounds that—

(a) The purchase would be disproportionately damaging to the company called The New Zealand Dairy Board Limited; or

(b) The Board cannot reasonably be expected to finance the purchase; or

(c) It would not be just and equitable to require the Board to purchase the shares.

(2) The Board must apply to the Court for an order exempting the Board from an obligation to purchase the shares of a qualifying company if the Board has resolved that the purchase by the Board would result in the Board failing to satisfy the solvency test.

(3) The Court may, on an application under this clause, make—

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART II—*continued*

BOARD DEEMED TO BE A COMPANY ON DISSOLUTION—*continued*

(a) An order exempting the Board from the obligation to purchase the shares:

(b) An order suspending the obligation to purchase the shares:

(c) Such other order as it thinks fit.

11. Payment of dividend on repurchased shares—(1) Where the Board is required by a qualifying company holding shares to purchase the shares held by that company pursuant to clause 9 of this Part of this Schedule, the Board may declare and pay a dividend in respect of those shares.

(2) The purchase price of the shares shall be reduced by the amount of any such dividend.

(3) Dividends paid pursuant to this clause shall be the same amount in respect of each share to be purchased by the Board.

PART III

SALE, TRANSFER, OR OTHER DISPOSITION OF UNDERTAKING BY BOARD

1. Board may adopt scheme for sale, transfer, or other disposition of undertaking on dissolution—(1) The Board may, at any time prior to its dissolution, adopt a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon its dissolution.

(2) The Board shall not adopt a scheme under subclause (1) of this clause unless—

(a) Within 12 months before adopting the scheme, the Board has obtained, at a meeting of duly authorised representatives of qualifying companies holding shares, or in writing, the approval to the scheme, of qualifying companies holding shares (including, as the case requires, successors of qualifying companies) whose aggregate qualifying milksolids during the most recent complete season was, in the Board's opinion, more than 90 percent of the aggregate quantity of the qualifying milksolids of all qualifying companies holding shares for the period; and

(b) The scheme includes—

(i) A procedure that, upon the coming into force of any Act of Parliament dissolving the Board, will enable any qualifying company that did not approve the scheme, to require the Board to purchase the shares held by the company on the day immediately preceding the date of dissolution; and

(ii) A procedure for establishing a fair and reasonable price for the purchase of the shares.

(3) If the Board adopts a scheme in accordance with subclause (1) of this clause,—

(a) The Board shall, upon its dissolution, sell, transfer, or otherwise dispose of the undertaking of the Board in accordance with the scheme; and

SECOND SCHEDULE—*continued*

NEW FIFTH SCHEDULE TO PRINCIPAL ACT—*continued*

"FIFTH SCHEDULE—*continued*

PROVISIONS APPLYING IN RELATION TO DISSOLUTION OF BOARD—*continued*

PART III—*continued*

SALE, TRANSFER, OR OTHER DISPOSITION OF UNDERTAKING BY BOARD—*continued*

(b) The provisions of the scheme relating to the purchase by the Board of shares held by qualifying companies shall be binding on the Board and qualifying companies according to their tenor.

(4) Subject to the constitution of the Board, a qualifying company holding shares may require the Board to hold a meeting of qualifying companies holding shares to consider whether the Board should adopt a scheme for the sale, transfer, or other disposition of the undertaking of the Board upon the dissolution of the Board.

PART IV

GENERAL PROVISIONS

1. Powers of Board—The Board has all the powers necessary or desirable for giving effect to the provisions of this Schedule.

2. Liability of qualifying companies—If the Board is dissolved, no qualifying company shall be liable by reason only of being a qualifying company or having held shares to make any payment towards or in respect of—

(a) Any liability of the Board; or

(b) The costs and expenses of, or any charges or claims made in respect of,—

(i) The dissolution of the Board; or

(ii) The adjustment among themselves of the rights of qualifying companies who held shares."

This Act is administered in the Ministry of Agriculture.