

COOPERATIVE DAIRY COMPANIES AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Cooperative Dairy Companies Act 1949.

Clause 1 relates to the Short Title.

Clause 2 amends section 4 of the principal Act by repealing subsection (6), and substituting new subsections (6) to (9). At present, the Registrar of Companies may cancel the registration of a cooperative dairy company if he is of the opinion that the company is not or has ceased to be a cooperative dairy company.

The new subsection (6) enables the Registrar to cancel the registration of any cooperative dairy company which notifies the Registrar that it is not or has ceased to be a cooperative dairy company within the meaning of the principal Act.

The new subsection (7) provides that if the Registrar has not been notified in accordance with the new subsection (6), but has grounds to believe that any company registered under the principal Act is not or has ceased to be a cooperative dairy company, he shall refer the grounds for his belief to the Cooperative Dairy Companies Tribunal and shall immediately notify the company.

The new subsection (8) requires the Tribunal to consider the grounds referred to it by the Registrar and such submissions as the company may make to the Tribunal. The Tribunal shall decide whether the company is, or is not, or has ceased to be, a cooperative dairy company.

The new subsection (9) requires the Tribunal to report its decision to the Registrar who shall immediately notify the company. The Registrar shall cancel the registration of the company if the Tribunal has decided that the company is not or has ceased to be a cooperative dairy company within the meaning of the Act.

Clause 3 inserts a new section 7B in the principal Act, relating to the consolidation or subdivision of the share capital of cooperative dairy companies.

Subsection (1) of the new section requires any cooperative dairy company that by resolution consolidates and divides its share capital or subdivides its existing shares to amend its articles of association by means of the same

resolution so that the new shareholding required to be held by each of its shareholders shall be that which bears the same proportion to his existing shareholding as the nominal value of any new share bears to the nominal value of any existing share to be consolidated or subdivided. No shareholder shall be required, by virtue of any consolidation or subdivision, to hold shares having a higher total nominal value than the total nominal value of existing shares which he is required to hold.

Subsection (2) of the new section provides that, unless the articles of association relating to the minimum shareholding required to be held by supplying shareholders are amended in accordance with subsection (1) of the new section, the consolidation or subdivision of share capital shall have no effect.

Subsection (3) provides that every resolution consolidating or subdividing share capital and altering the company's articles of association shall for the purposes of the principal Act be deemed to have come into force 5 years before the day on which the resolution was passed. Under section 8 (1) (b) of the principal Act, an alteration to the articles of association of any dairy company is binding on a supplying shareholder who has not voted in favour of the resolution for the alteration carried by a majority of less than $\frac{9}{10}$ ths of the members and he may be obliged to accept up to 50 percent more shares than the smallest number he would have been obliged to hold for a similar supply at any time within 5 years before the date of the passing of the resolution. If an alteration to the articles of association of a cooperative dairy company, to which alteration the said section 8 (1) (b) relates, takes place after a consolidation or subdivision of share capital under the new section 7B, the smallest number of shares held by a supplying shareholder is determined by the resolution consolidating or subdividing the share capital coming into force 5 years before its passing.

Section 8 of the principal Act is consequentially amended by adding a new subsection (5) to make clear that nothing in section 8 or section 9 of the principal Act applies to any consolidation or subdivision of share capital carried out in accordance with the new section 7B.

Clause 4 amends section 20 of the principal Act, relating to the functions of the Cooperative Dairy Companies Tribunal. A new paragraph (aa), inserted in the said section 20, extends the functions of the Tribunal to decide whether a company is, or is not, or has ceased to be, a cooperative dairy company within the meaning of the principal Act. This amendment is consequential on *clause 2*.

Clause 5 inserts a new section 24A in the principal Act, relating to the power of a liquidator to accept shares or other consideration for the transfer or sale of the whole or any part of a cooperative dairy company's business, or other property of the company, to another cooperative dairy company. At present, a liquidator of a cooperative dairy company is empowered under section 278 of the Companies Act 1955 to accept shares or other consideration in the event of a transfer or sale, but the effect of the new section is to introduce a new procedure to apply to transfers and sales between cooperative dairy companies.

Subsection (1) of the new section provides that if the whole or any part of the business of a cooperative dairy company, which is proposed to be or is in the course of being voluntarily wound up, is to be sold or transferred to another cooperative dairy company, the liquidator of the company being wound up may, if so authorised by special resolution of that company,

receive shares, policies, or other like interests in the transferee company by way of compensation for the transfer or sale, or may enter into any other arrangement whereby the members of the transferor company may participate in the profits of or receive any other benefit from the transferee company.

Subsection (2) of the new section provides that, subject to subsection (3) of the new section, all members of the transferor company shall be bound by any transfer, sale, or arrangement made by the transferor and transferee companies pursuant to the new section.

Subsection (3) of the new section sets out, in paragraphs (a) to (g), the procedure which must be complied with by the transferor and transferee companies before proceeding with the transfer, sale, or other arrangement, if it is to be binding on any member of the transferor company.

Paragraph (a) of subsection (3) requires the transferor company to forward a detailed statement of the proposed transfer, sale, or other arrangement to each of its members, and, by giving not less than 14 clear days' notice, to call a meeting of members to vote on the proposal.

Paragraph (b) of subsection (3) requires a resolution to be passed at the meeting of the members of the transferor company by a majority of those entitled to vote at the meeting that the transfer, sale, or other arrangement proceed as proposed, or proceed in an amended form.

Paragraph (c) of subsection (3) requires the transferor company to notify the transferee company of the resolution passed at the meeting of the transferor company.

Paragraph (d) of subsection (3) requires the transferee company to forward to each of its members a copy of the detailed statement mentioned in paragraph (a) in such amended form as may have been resolved in accordance with paragraph (b), and to call a meeting of its members to vote on the proposal by giving them not less than 14 clear days' notice of the meeting.

Paragraph (e) of subsection (3) requires the transferee company to pass an extraordinary resolution that the proposal proceed in accordance with the terms of the resolution passed by the members of the transferor company.

Paragraph (f) of subsection (3) requires the transferee company to notify the transferor company of the extraordinary resolution passed in accordance with paragraph (e).

Paragraph (g) of subsection (3) requires the transferor company, within 1 month of the passing of the extraordinary resolution passed by the transferee company, to call a meeting, by giving not less than 14 clear days' notice to the members of the transferor company, and to confirm by extraordinary resolution the resolution passed in accordance with paragraph (b).

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

Subsection (5) of the new section reproduces provisions similar to those contained in section 278 (5) of the Companies Act 1955. It provides that no special resolution or extraordinary resolution shall be invalid for the purposes of the new section by reason of being passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators. If within 1 year after the passing of that resolution an order is made for winding up the company by or subject to the supervision of the Court, the resolution shall not be valid unless sanctioned by the Court.

Subsection (6) of the new section provides that notwithstanding anything in section 3 or section 8 of the principal Act, or in the articles of association of a cooperative dairy company, regulations 66, 68, and 70 to 80 of the model articles of association set out in the First Schedule to the principal Act shall, for the purposes of the new section, apply to every cooperative dairy company. Regulations 66, 68, and 70 to 80 relate to voting by members of cooperative dairy companies. Subsection (6) also provides that, notwithstanding anything in section 3 or section 8 of the principal Act, or in the articles of association of a cooperative dairy company, any person who is qualified to act as a director of any transferor company at the date of its dissolution will be deemed by virtue of that qualification to be qualified for a period of 1 year from that date to act as a director of the transferee company.

Clause 5 (2) amends section 28 of the principal Act. The effect is to make clear that a cooperative dairy company may, as the transferor company, act pursuant to section 278 of the Companies Act 1955 if the other company to the transfer, sale, or arrangement, is not itself a cooperative dairy company.

Hon. Mr Riddiford

**COOPERATIVE DAIRY COMPANIES
AMENDMENT**

ANALYSIS

Title	
1. Short Title	4. Functions of Tribunal
2. Registration of cooperative dairy company	5. Power of liquidator to accept shares, etc., as consideration for sale of property or company to another cooperative dairy company
3. Consolidation or subdivision of share capital	

A BILL INTITULED

**An Act to amend the Cooperative Dairy Companies Act
1949**

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

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

2. **Registration of cooperative dairy company**—Section 4 of the principal Act is hereby amended by repealing subsection (6), and substituting the following subsections:
“(6) If the Registrar is notified by any company registered under this Act that it is not or has ceased to be a cooperative dairy company within the meaning of this Act, he shall cancel its registration, and the company shall cease to be subject to the provisions of this Act.

*1957 Reprint, Vol. 2, p. 799
Amendments: 1959, No. 56; 1963, No. 81

“(7) If the Registrar has not been notified in accordance with subsection (6) of this section, but at any time has grounds to believe that any company registered under this Act is not or has ceased to be a cooperative dairy company within the meaning of this Act, he shall refer those grounds to the Tribunal, and give notice immediately to the company that he has done so. Every notice shall inform the company of the grounds referred to the Tribunal. 5

“(8) The Tribunal shall, after giving the company a reasonable opportunity to be heard on the matter and hearing such submissions (if any) as the company may make, consider the grounds referred to it by the Registrar and any submissions made by the company, and shall decide whether the company is, or is not, or has ceased to be, a cooperative dairy company within the meaning of this Act. 10 15

“(9) Every decision of the Tribunal under this section shall be reported by the Tribunal to the Registrar, who shall immediately notify the company. If the decision is that the company is not or has ceased to be a cooperative dairy company within the meaning of this Act, the Registrar shall forthwith cancel the registration of the company which shall cease to be subject to the provisions of this Act.” 20

3. Consolidation or subdivision of share capital—(1) The principal Act is hereby further amended by inserting, after section 7A of the principal Act (as inserted by section 2 of the Cooperative Dairy Companies Amendment Act 1959), the following section: 25

“7B. (1) Notwithstanding anything in this Act, or in any articles of association of any cooperative dairy company, and notwithstanding that the articles may constitute a contract or provide evidence of the terms of a contract between the company and the shareholders or any of them, if any cooperative dairy company, by resolution in accordance with its articles of association, consolidates and divides all or any of its share capital into shares of larger amount than its existing shares, or subdivides its existing shares, or any of them, into shares of smaller amount than is fixed by its memorandum of association, it shall by the same resolution amend those articles of association of the company relating to any shareholding required to be held by shareholders so that the new shareholding required to be held shall be that 30 35 40

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

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

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

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

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

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

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

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

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

pensation or part compensation for the transfer or sale) shares, policies, or other like interests in the transferee company for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company. 5

“(2) Subject to subsection (3) of this section, every transfer, sale, or arrangement made by a transferor company and a transferee company pursuant to this section shall be binding on all members of the transferor company. 10

“(3) No transfer, sale, or other arrangement mentioned in this section shall be binding on any member of the transferor company unless, before proceeding with the transfer, sale, or other arrangement,— 15

“(a) The transferor company forwards to each member of the company a detailed statement of the proposed transfer, sale, or other arrangement, and calls a meeting of all members by giving not less than 14 clear days’ notice to each member specifying the time, place, and the object of the meeting which shall be to vote on the proposed transfer, sale, or other arrangement; and 20

“(b) A resolution is passed at the meeting, by a majority of the members entitled to vote at the meeting, that the proposed transfer, sale, or other arrangement proceed in accordance with the proposal or in such amended form as may be resolved; and 25

“(c) The transferor company notifies the transferee company of the resolution passed in accordance with paragraph (b) of this subsection in its proposed or amended form; and 30

“(d) The transferee company forwards to each of its members a copy of the detailed statement mentioned in paragraph (a) of this subsection in such amended form as may be resolved in accordance with paragraph (b) of this subsection, and calls a meeting of all members of the transferee company by giving not less than 14 clear days’ notice to each member specifying the time, place, and the object of the meeting which shall be to vote on the proposed transfer, sale, or other arrangement; and 35 40

- 5 “(e) An extraordinary resolution is passed at the meeting called in accordance with paragraph (d) of this subsection that the proposed transfer, sale, or other arrangement proceed in accordance with the terms of the resolution passed by the members of the transferor company in accordance with paragraph (b) of this subsection; and
- 10 “(f) The transferee company notifies the transferor company of the extraordinary resolution passed in accordance with paragraph (e) of this subsection; and
- 15 “(g) Within 1 month after the passing of the extraordinary resolution mentioned in paragraph (e) of this subsection, the transferor company, by giving not less than 14 clear days’ notice to each member of the company, calls a meeting of all members at which the resolution passed by the transferor company in accordance with paragraph (b) of this subsection is confirmed by extraordinary resolution.
- 20 “(4) If any member of the transferor company who did not vote in favour of the extraordinary resolution mentioned in paragraph (g) of subsection (3) of this section notifies his intention not to supply the transferee company with milk, cream, or butterfat, or otherwise expresses his dissent from that resolution, in writing delivered to the registered office of the transferor company within 7 days after the passing of that resolution, he may require the company to purchase his interest at a price equivalent to the amount paid up or deemed to be paid up on the shares held by that member in
- 30 the transferor company. The money required to pay the purchase price shall, if necessary, be raised by the company in such manner as shall be determined by extraordinary resolution, and the purchase price shall be paid before the transferor company is dissolved.
- 35 “(5) A special resolution, or an extraordinary resolution, shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators, but, if within 1 year after the date of passing that resolution an order
- 40 is made for winding up the company by or subject to the supervision of the Court, the special resolution or the extraordinary resolution shall not be valid unless sanctioned by the Court.

6 *Cooperative Dairy Companies Amendment*

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

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

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

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

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