

*This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.*

*House of Representatives,*

*28th September, 1949.*

*Hon. Mr. Nordmeyer*

## CO-OPERATIVE DAIRY COMPANIES

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## A BILL INTITULED

Title.	AN ACT to Consolidate and Amend the Law Relating to Co-operative Dairy Companies.	
	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	5
Short Title.	1. This Act may be cited as the Co-operative Dairy Companies Act, 1949.	
Interpretation. Cf. 1908, No. 37, s. 48 1933, No. 29	2. (1) In this Act, unless the context otherwise requires,— “ Co-operative dairy company ” means a company which is incorporated under the Companies Act, 1933 (whether before or after the commencement of this Act), which has adopted regulations in the form of the regulations specified in the <i>next succeeding</i> subsection, or in subsection <i>three</i> of this section, as the case may require, and which has for its principal object the manufacture of butter, cheese, dried milk, casein, or any other pro- duct from milk, cream, or butterfat supplied to the company by its shareholders, or the collection, treatment, and distribution for human consumption of milk or cream so supplied to the company; but does not include a co-operative milk-marketing com- pany as defined in subsection four of section ninety-five of the Milk Act, 1944, which is registered under the Co-operative Companies Act, 1933:	10
1944, No. 30	“ Principal object ” in relation to any company means the principal business which the company for the time being carries on, notwith- standing that by its memorandum of association or by any Act the company may be authorized to carry on any other business:	15 20 25
1933, No. 49	“ Supplying shareholder ” means a shareholder of a co-operative dairy company who, at the date during the financial year of the company on which his status as a shareholder under this section is to be determined,— (a) After making provision for his own domestic requirements (if any), is supplying to the company the whole or such portion as	30 35 40

5 the company requires of the milk, cream, or  
butterfat obtained from cows owned by him  
or subject to his control, and depasturing on  
land conveniently served by the company and  
from which the company is permitted and  
willing to take supply; and

(b) Has so supplied the company continu-  
ously from the time he commenced to supply  
during that financial year; and

10 (c) While so supplying has performed in  
relation to that supply all his obligations as a  
shareholder which the company has from time  
to time during that financial year lawfully  
required of him:

15 Provided that a shareholder who at the date  
aforesaid has not commenced to supply to the  
company during that financial year by reason  
of the fact that his cows have not yet come into  
profit shall be deemed for the purposes of  
20 paragraphs (a) and (b) of this definition to be  
supplying continuously to the company the  
whole of his supply as aforesaid if in the  
opinion of the directors of the company he will  
commence and continue during the financial  
25 year so to supply as soon as his cows come  
into profit; but no person shall be deemed a  
supplying shareholder within the meaning of  
this definition unless he or a predecessor in  
title in respect of his shares has, while regis-  
30 tered as the owner of those shares, supplied  
milk, cream, or butterfat to the company at  
some time during the period of eight months  
immediately preceding the date aforesaid:

35 Provided also that in the case of a  
company first incorporated after the com-  
mencement of this Act every shareholder shall  
be deemed for the purposes of this Act to be  
a supplying shareholder until such time as  
the company commences to receive milk, cream,  
40 or butterfat:

45 Provided further that where a company  
registered under this Act has ceased to manu-  
facture dairy produce from milk, cream, or  
butterfat supplied by its shareholders, all  
shareholders who were supplying share-

holders immediately before that cessation shall be deemed for the purposes of this Act to continue to be supplying shareholders until such time as the company recommences to manufacture dairy produce from milk, cream, or butterfat supplied by its shareholders: 5

Provided further that where a co-operative dairy company registered under this Act or a co-operative milk-marketing company within the meaning of the Milk Act, 1944, and registered under the Co-operative Companies Act, 1933, holds shares in a co-operative dairy company registered under this Act, it shall be deemed for the purposes of this Act to be a supplying shareholder of the last-mentioned company: 15

“Tribunal” means the Co-operative Dairy Companies Tribunal established under this Act.

(2) The regulations referred to in the definition of the term “co-operative dairy company” in the *last preceding* subsection are, in the case of a company which has not established special groups of shareholders, so much of regulation *four* of the model articles of association set out in the *First Schedule* to this Act as relates to the definition of the term “supplying shareholder”, subclause *one* of regulation *eighty-two*, paragraph *(a)* of regulation *eighty-nine*, and regulations *one hundred and thirty-two* to *one hundred and forty-two*, *one hundred and forty-four*, and *one hundred and forty-eight* to *one hundred and fifty-one* of the said model articles of association. 20 25 30

(3) The regulations referred to in the definition of the term “co-operative dairy company” in subsection *one* of this section are, in the case of a company which has established special groups of shareholders, the regulations specified in the *last preceding* subsection (except regulation *one hundred and thirty-four*) and regulations *one hundred and fifty-seven* to *one hundred and sixty-four* of the said model articles of association. 35 40

3. (1) Any company (whether incorporated before or after the commencement of this Act) which has for its principal object the manufacture of butter, cheese, dried milk, casein, or any other product from milk, cream, or butterfat supplied to the company by its shareholders, or the collection, treatment, and distribution for human consumption of milk or cream so supplied to the company, may by special resolution adopt all or any of the regulations contained in the model articles of association set out in the *First* Schedule to this Act.

Model articles  
of association.

(2) In the case of a company incorporated before the commencement of this Act, those regulations or any of them may be adopted in substitution for all or any of the existing articles of association of the company, notwithstanding that the existing articles of association may constitute a contract or provide evidence of the terms of a contract between the company and its shareholders or any of them, and the undistributed funds of the company at the date of the adoption shall thereupon be administered in accordance with the provisions of the regulations so adopted.

(3) Any company (whether incorporated before or after the commencement of this Act) may from time to time by special resolution modify or exclude any such regulation adopted under subsection *one* of this section:

Provided that, if, in the case of a company which is registered as a co-operative dairy company under this Act, the company modifies or excludes any of the regulations specified in subsection *two* or subsection *three*, as the case may require, of section *two* of this Act, the company shall thereupon be deemed for the purposes of subsection *six* of the *next succeeding* section to have ceased to be a co-operative dairy company within the meaning of this Act.

4. (1) A co-operative dairy company may at any time, on application to the Registrar of Companies under the Companies Act, 1933, become registered as such under this Act, and when so registered shall become subject to the provisions of this Act accordingly.

Registration of  
co-operative  
dairy company  
Cf. 1908,  
No. 37, s. 49  
1933, No. 29

(2) For every such registration there shall be paid a fee of one pound.

(3) The said Registrar shall issue to the company when so registered a certificate of registration under this Act, and that certificate shall be conclusive evidence of the validity of the registration.

1907, No. 56

(4) In the case of companies incorporated after the twenty-third day of November, nineteen hundred and seven, being the date of commencement of the Co-operative Dairy Companies Act, 1907, no application for registration under this Act shall be made unless registration under this Act is provided for by the articles of association of the company or by a special resolution of the company. 5

(5) Every application for the registration of a company under this Act shall be accompanied by a statutory declaration, made by the secretary and one or more directors or officers of the company, that the company is a co-operative dairy company within the meaning of this Act. 10

(6) Any registration of a company under this Act may at any time be cancelled by the Registrar if he is of opinion that the company is not or has ceased to be a co-operative dairy company within the meaning of this Act, and upon the cancellation being notified to the company the company shall cease to be subject to the provisions of this Act. 20

Dairy companies not to describe themselves as co-operative unless entitled to registration under this Act. Cf. 1926, No. 35, s. 8 1933, No. 29

1933, No. 49

5. (1) No company which has for its objects or one of its objects the manufacture of butter, cheese, dried milk, casein, or any other product from milk or cream, or the collection, treatment, and distribution for human consumption of milk or cream, shall be registered under the Companies Act, 1933, under any name which includes the word "co-operative" or any word of like significance, unless it is entitled to be registered as a co-operative dairy company under this Act, or as a co-operative milk-marketing company under the Co-operative Companies Act, 1933, or unless all its shares are held by co-operative dairy companies registered under this Act. 25 30

(2) If at any time after it is so registered under the Companies Act, 1933, a co-operative dairy company ceases to be entitled to be registered under this Act or its registration under this Act is cancelled, the Registrar of Companies may, unless the company is entitled to be registered as a co-operative milk-marketing company under the Co-operative Companies Act, 1933, call upon it to take steps to change its name so as to remove the significance that it is a co-operative company, and the company shall, not later than one month from the date of the notice from the Registrar, take the appropriate 35 40 45

steps under the Companies Act, 1933, to change its name.

- (3) If any company fails to comply with the provisions of the *last preceding* subsection, the chairman and every director thereof shall be severally liable on  
 5 summary conviction to a fine not exceeding ten pounds for every day during which the default continues.

6. Every company which immediately before the commencement of this Act was registered as a co-operative dairy company under Part III of the Dairy  
 10 Industry Act, 1908, shall be deemed as from the commencement of this Act to be registered as a co-operative dairy company under this Act:

Existing co-operative dairy companies to adopt certain articles of association. See Reprint of Statutes, Vol. I, p. 90

- Provided that any such company which at the commencement of this Act does not have articles of  
 15 association which include regulations in the form of the regulations specified in subsection *two* or subsection *three*, as the case may require, of section *two* of this Act and which does not within two years after the commencement of this Act adopt regulations in that form  
 20 shall be deemed for the purposes of subsection *six* of section *four* of this Act to have ceased at the expiration of the said period of two years to be a co-operative dairy company within the meaning of this Act.

7. Where a company registered under this Act has  
 25 adopted regulations in the form of any of the regulations in the model articles of association set out in the *First Schedule* to this Act, the memorandum of association of the company shall be read subject to the provisions of the regulations so adopted.

Memorandum of association to be read subject to model articles of association.

- 30 8. Notwithstanding that the articles of association may constitute a contract or provide evidence of the terms of a contract between the company and the shareholders or any of them, any alteration or addition lawfully made in the articles of association of any company  
 35 registered under this Act shall be as valid as if originally included therein, and shall be binding on all the members of the company, and every such contract shall be read subject to that alteration or addition:

Alteration of articles of association may affect contracts contained in or evidenced by the articles.

- 40 Provided that no such alteration or addition shall affect any contract between the company and any shareholder which is not created or evidenced by or in the terms of the articles of association, or impose on any shareholder who has not voted for the resolution to alter or add to the articles an obligation to hold shares in

respect of his supply from time to time of milk, cream, or butterfat to the company which exceed by more than twenty-five per centum the number of shares which he would be obliged to hold in respect of a similar supply immediately before the passing of that resolution. 5

Only supplying shareholders entitled to vote.

9. (1) No shareholder of a company which is registered under this Act who is not for the time being a supplying shareholder of the company shall be entitled to vote at any meeting of the company or on any postal ballot conducted by the company. 10

1944, No. 30  
1933, No. 49

(2) Where a co-operative dairy company registered under this Act or a co-operative milk-marketing company within the meaning of the Milk Act, 1944, and registered under the Co-operative Companies Act, 1933, holds shares in a co-operative dairy company registered under this Act, it shall be entitled to vote at a meeting of or in a postal ballot conducted by the last-mentioned company only in respect of shares which it is required to hold by the articles of association of the said last-mentioned company having regard to its supply of milk, cream, or butterfat to the said last-mentioned company during the immediately preceding financial year of the said last-mentioned company. 15  
20

Shareholder may surrender shares.

Cf. 1903,  
No. 37, ss. 50,  
53

10. (1) Any shareholder of a company which is registered under this Act who has not supplied milk, cream, or butterfat to the company during the immediately preceding period of five years may surrender to the company any shares held by him in the company, and, subject to the provisions of section *fourteen* of this Act, the company shall accept that surrender. 25  
30

(2) In any case not provided for in the *last preceding* subsection a company registered under this Act may in its discretion, subject to the provisions of section *fourteen* of this Act, accept from any shareholder a surrender to the company of any of his shares. 35

Compulsory surrender of shares.  
Ibid., s 54

11. (1) Any company registered under this Act may at any time (subject to any restrictions or conditions imposed by its articles of association and to section *fourteen* of this Act) require any shareholder to surrender to the company the shares held by him, or so many of them as the company thinks fit, in consideration of the payment by the company out of its assets of the 40



amount paid up or deemed to be paid up on the shares so surrendered, together with interest thereon at the rate of five per centum per annum, calculated from the end of the immediately preceding financial year of the  
5 company to the date of surrender.

(2) Notwithstanding anything contained in the *last preceding* subsection, any company registered under this Act may at any time by resolution of the directors but subject to the provisions of section *fourteen* of this  
10 Act,—

(a) Require any shareholder who has not during the immediately preceding period of twelve months supplied milk, cream, or butterfat to the company to surrender his shares to the  
15 company:

(b) Require any shareholder who has been allotted shares in any special group and who has not during the immediately preceding period of twelve months supplied milk, cream, or  
20 butterfat to that group to surrender his shares in that group to the company:

(c) Require any shareholder, who for the time being holds and has for the whole of the immediately preceding period of five years held shares in the company in excess of the number which, having regard to his supply from time to time of milk, cream, or butterfat to the company, he is required to hold under the provisions of the articles of association of the company, to  
25 surrender to the company all or any of the shares so held by him in excess of the number he is so required to hold.  
30

Provided that no demand for the surrender of any share shall be made under the authority of this sub-  
35 section if the shareholder will remain liable under any obligation or liability as a guarantor or surety under any instrument given by him in respect of any obligation incurred by or liability of the Company.

(3) No demand for the surrender of any share shall  
40 be made under the authority of subsection *one* of this section except in pursuance of a resolution of the supplying shareholders of the company.

(4) On the expiration of one month after a written notice of any resolution under either of the *last two* preceding subsections has been received by any shareholder the shares to be surrendered by him pursuant to the resolution shall be deemed to have been duly surrendered to the company. 5

Consideration for surrender of shares.  
Cf. 1908, No. 37, s. 53

12. There shall be payable to every shareholder whose shares are surrendered under the provisions of section *ten* of this Act or of subsection *two* of the *last preceding* section out of the assets of the company by way of consideration for that surrender such amount, not exceeding the amount paid up or deemed to be paid up on the shares surrendered, as shall be agreed upon by the company and the shareholder, or, in default of agreement, as shall be fixed by the Co-operative Dairy Companies Tribunal under the provisions hereinafter appearing. 10 15

Reissue of shares surrendered under this Act.  
Cf. *ibid.*, s. 51

13. Any shares surrendered under the foregoing provisions of this Act may be reissued by the company to any person in the same manner as if they had not been previously issued. 20

Surrendered shares not to exceed one-fifth of issued shares without authority of Tribunal.  
Cf. *ibid.*, s. 52

14. (1) Except with the authority of the Co-operative Dairy Companies Tribunal as hereinafter provided, the number of shares surrendered to a company under the provisions of this Act and not reissued shall not at any time exceed one-fifth of the total number of shares issued by the company, exclusive of the said shares so surrendered and not reissued. 25

(2) Any director of a company who accepts, authorizes, or consents to the surrender of any share in breach of the provisions of this section commits an offence, and shall be liable on summary conviction to a fine not exceeding fifty pounds in respect of each share so unlawfully surrendered. 30

Certain companies associated with dairy companies may accept surrender of shares.  
Cf. 1936, No. 58, s. 22  
1933, No. 29

15. (1) Every company of a class referred to in paragraph (b) of section eighteen of the Companies Act, 1933, may in its discretion accept a surrender of any share in the company from a shareholder who agrees to the surrender, and in any such case there shall be payable to the shareholder out of the assets of the company such amount as is agreed upon between the company and the shareholder by way of consideration for the surrender: 35 40

Provided that this section shall apply to such a company only where not less than ninety per centum of the shares for the time being allotted in the share capital of the company are owned by one or more co-operative  
5 dairy companies registered under this Act.

(2) The provisions of sections *thirteen* and *fourteen* of this Act shall apply, with the necessary modifications, to every company of a class referred to as aforesaid, save that the Tribunal shall have no jurisdiction  
10 in respect of any shares in a company to which this section applies.

**16.** (1) This section shall apply in every case where—

Forfeiture of shares of untraceable shareholders.

(a) The registered owner for the time being of shares  
15 in a company registered under this Act—

(i) Has ceased for the whole of the immediately preceding period of five years to be a supplying shareholder of the company; and

(ii) Has left his last address known to the  
20 company and has no agent whose address is known to the company; and

(iii) In any case where a dividend has been declared by the company during the said period of five years, has failed to claim the said  
25 dividend:

(b) The registered owner for the time being of shares  
in a company registered under this Act has been deceased for more than five years and no application has been made to the company for registration of any transmission in respect of  
30 the shares and no probate or letters of administration in his estate have been produced to the company for noting.

(2) In any case to which this section applies the  
35 company may publish a notice in three consecutive issues of a newspaper circulating in the district in which the company operates of its intention to forfeit the shares under this section at the expiration of three months from the date of the first publication of the notice, unless  
40 within that time the registered owner or his legal personal representative or some person claiming to be entitled to the shares establishes to the satisfaction of the directors good cause to the contrary. Every such notice shall set out the name of the registered owner, the  
45 number of shares, and the amount paid up thereon.

(3) Unless within the said period of three months the registered owner or his legal personal representative or some other person establishes his title to the shares to the satisfaction of the directors, the directors may by resolution, at any time after the expiration of the said period of three months, declare the said shares to be forfeited, and, subject to the *next two succeeding* subsections, the shares shall thereupon be deemed to be forfeited to the company. 5

(4) At any time within one year after the passing of a resolution of the directors under the *last preceding* subsection any person claiming to be entitled to the shares so forfeited may apply to the Co-operative Dairy Companies Tribunal for an order cancelling the forfeiture and restoring the shares to the share register of the company. Notice of the application shall be served by the applicant on the company at its registered office. 10 15

(5) After considering the application the Tribunal shall make such order as it considers just and equitable in all the circumstances of the case, either dismissing the application or ordering the cancellation of the forfeiture and the restoration of the shares to the share register. 20

(6) If no application under subsection *four* of this section is made within the said period of one year, or if every application made under that subsection in respect of those shares is dismissed by the Tribunal, the directors may, at any time after the expiration of the said period of one year or after all such applications have been dismissed by the Tribunal, whichever is the later, reissue or sell the shares on such terms as they think fit, and the company may receive the consideration given for the shares on the reissue or sale thereof, and may re-allot or execute a transfer of those shares in favour of the person to whom the shares are reissued or sold as aforesaid, and may register that person as the owner thereof. The title of any person so registered as the owner of the shares shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, re-issue, or sale of the shares. 25 30 35

(7) The powers of forfeiture conferred by the foregoing provisions of this section shall be in addition to and not in substitution for any other powers which the company may have to forfeit shares. 40

*Co-operative Dairy Companies Tribunal*

17. (1) There is hereby established for the purposes of this Act a tribunal to be known as the Co-operative Dairy Companies Tribunal. Co-operative Dairy Companies Tribunal.
- 5 (2) The Tribunal shall consist of—
- (a) One member to be appointed by the Minister of Stamp Duties on the nomination of the New Zealand Dairy Board established under the Dairy-produce Act, 1923: See Reprint of Statutes, Vol. VIII, p. 659
- 10 (b) One member to be appointed by the said Minister on the recommendation of the Minister of Agriculture:
- (c) One other member to be appointed by the Minister of Stamp Duties.
- 15 (3) The members of the Tribunal shall hold office during the pleasure of the Minister of Stamp Duties.
- (4) If any member of the Tribunal dies, resigns, or is removed from office, the vacancy so created shall be filled in the manner in which the appointment to the
- 20 vacant office was originally made.
- (5) The Minister of Stamp Duties may from time to time appoint one of the members of the Tribunal to be the Chairman thereof.
18. (1) The Tribunal shall meet for the despatch of Procedure of Tribunal.
- 25 business at such times and places as it thinks fit.
- (2) All the members of the Tribunal shall be present at every meeting of the Tribunal.
- (3) The Chairman of the Tribunal shall preside at every meeting thereof.
- 30 (4) Every question before the Tribunal shall be decided by a majority of the votes of the members or, failing a majority, by the Chairman.
- (5) For the purposes of any application to the Tribunal under this Act the provisions of the Commissions of Inquiry Act, 1908, shall, so far as they are applicable and with the necessary modifications, apply as if the Tribunal were a Commission of Inquiry appointed under that Act. Ibid., Vol. I, p. 1036
- 35 (6) The Tribunal may receive as evidence any
- 40 statement, document, information, or matter that in the opinion of the Tribunal may assist it to deal effectually with the matters before it, whether or not the same would be otherwise admissible in a Court of law.
- (7) Subject to the provisions of this Act and of any
- 45 regulations made under this Act, the Tribunal shall determine its own procedure.

Decisions of  
Tribunal to  
be final.

**19.** (1) Every decision of the Tribunal shall be final and binding on the parties to the proceedings.

(2) Proceedings before the Tribunal shall not be held bad for want of form, and no appeal shall lie from any decision of the Tribunal, nor, except on the ground of lack of jurisdiction, shall any proceeding or decision of the Tribunal be challenged, reviewed, quashed, or called in question in any Court. 5

Functions of  
Tribunal.

**20.** The functions of the Tribunal shall be—

(a) To fix the fair value of shares surrendered to a company under section *ten* or under subsection *two* of section *eleven* of this Act, not exceeding the amount for the time being paid up or deemed to be paid up on the shares so surrendered, in cases where the company and the shareholder are unable to agree as to the value of those shares: 10 15

(b) To fix the terms of repayment by the company of the value of shares surrendered to it under section *ten* or under subsection *two* of section *eleven* of this Act (whether that value has been agreed on by the company and the shareholder or has been fixed by the Tribunal under the *last preceding* paragraph), in cases where the company and the shareholder have been unable to agree as to the terms of repayment: 20 25

Provided that no such terms of repayment shall be fixed by the Tribunal under which repayment is to be made over a period of more than ten years from the date of the application to the Tribunal: 30

(c) To authorize companies registered under this Act to accept surrenders of shares in excess of the limitations imposed by section *fourteen* of this Act: 35

(d) To determine applications under subsection *four* of section *sixteen* of this Act for cancellation of forfeitures of shares.

Matters to  
be considered  
by Tribunal.

**21.** (1) In considering any application under paragraph (a) of the *last preceding* section to fix the fair value of shares surrendered to a company, the Tribunal shall have regard to the following matters:— 40

(a) The amount which the shares would be worth if the company had at the time of the valuation passed a resolution to be wound up voluntarily: 45

- (b) The value of the shares on the assumption that the company would continue to operate as a going concern:
- 5 (c) The market value (if any) of the shares:
- (d) The amounts (if any) which have been paid by the company on any previous voluntary surrenders of shares:
- 10 (e) The future prospects of the company having regard to the likelihood or otherwise of the continuation in the normal course of satisfactory supplies of milk, cream, or butterfat:
- (f) The ability of the company to meet the cost of surrender and its effect on the remaining supplying shareholders:
- 15 (g) Whether the shareholder has loyally carried out his obligations to the company as a supplier and whether any failure by him to supply to the company was detrimental to the interests of the company:
- 20 (h) Whether the failure of the company is imminent:
- (i) Whether the shareholder is under any obligation or liability as a guarantor or surety under any instrument given by him in respect of any obligation incurred by or liability of the company:
- 25 (j) Any other matter which the Tribunal considers has a bearing on the fair value of the shares.

(2) Where on any such application the Tribunal considers the failure of the company to be imminent it may in its discretion adjourn the application for such period, not exceeding one year, as it thinks fit, and, if at the expiration of that period the company has not commenced to be wound up, the Tribunal shall proceed to make an order fixing the fair value of the shares.

35 (3) The Tribunal shall not make an order under paragraph (c) of the *last preceding* section unless it is satisfied that the creditors of the company will not be prejudiced by the surrender.

40 **22.** (1) Any application to the Tribunal to fix the value of shares surrendered to a company under section *ten* or under subsection *two* of section *eleven* of this Act or to fix the terms of repayment by the company of the value of any shares so surrendered may be made by the company or by the shareholder at any time after the

45 shares are surrendered or are deemed to have been surrendered to the company.

Applications  
to Tribunal.

(2) Where any surrender of shares to a company pursuant to subsection *one* of section *ten* of this Act would increase beyond the limits imposed by subsection *one* of section *fourteen* of this Act the number of shares surrendered to the company and not reissued, the company shall, within two months after the receipt by it of written notice by the shareholder of his intention to surrender those shares, make application to the Tribunal for an order under paragraph (*c*) of section *twenty* of this Act authorizing it to accept the surrender, failing which the shareholder may at any time after the expiration of the said period of two months make application to the Tribunal for an order as aforesaid. 5 10

Determination by Tribunal where shareholders classified into different groups.

**23.** Where any company registered under this Act has issued shares to special groups of shareholders any question before the Tribunal in respect of the surrender of shares in any such group may, in the discretion of the Tribunal, and if the Tribunal is satisfied that the creditors of the company will not be prejudiced thereby, be determined as if that group were a separate co-operative dairy company registered under this Act. 15 20

Value of surrendered shares to be unsecured debt.

**24.** Where any shares are surrendered to a company under this Act the value thereof, determined in accordance with the provisions of this Act, shall be deemed to be an unsecured debt by the company to the shareholder, and, subject to any order of the Tribunal as to the terms of payment, shall be deemed to be payable immediately and shall be recoverable accordingly in any Court of competent jurisdiction. 25 30

#### General Provisions

Foregoing provisions to override provisions of Companies Act, 1933, &c. 1933, No. 29

**25.** Except where this Act expressly provides to the contrary, the foregoing provisions of this Act shall take effect notwithstanding anything contained in the Companies Act, 1933, or in any rule of law, or in the memorandum or articles of association of any company. 35

Personal representatives trustees, and others entitled to take up or retain shares in co-operative dairy companies.

**26.** (1) Notwithstanding any rule of law to the contrary, but subject to any express provision to the contrary in any will, trust instrument, order, or other act or document under which he derives his authority, and subject also to section *eleven* of this Act, where the executor, administrator, or trustee of the estate of a deceased person, the trustee under any other trust, the 40



committee or administrator of the estate of a mentally defective person, the manager of the estate of a protected person, or the administrator of the estate of a convict is empowered to carry on a farming business forming part of the assets of the estate or subject to the trust, as the case may be, he may, so long as he continues lawfully to carry on that business,—

(a) Take up and subscribe for out of such of the assets of the estate or subject to the trust as he may lawfully use in the carrying on of that business so many shares in a co-operative dairy company registered under this Act to which he is supplying milk, cream, or butter-fat derived from that business as he is required by the articles of association of the company to hold from time to time in respect of that supply:

(b) In the case of an executor, administrator, or trustee of the estate of a deceased person or the trustee under any other trust, retain as part of the assets of the estate or subject to the trust any shares forming part of the estate or subject to the trust in a co-operative dairy company registered under this Act to which he is supplying milk, cream, or butter-fat derived from that business.

(2) The *last preceding* subsection shall apply in any case whether or not a share-milker within the meaning of the Share-milking Agreements Act, 1937, is engaged to assist in the carrying on of the business and is entitled to receive a share of the returns or profits derived from the business.

**27.** The Governor-General may from time to time, by Order in Council, make such regulations as he thinks necessary in order to give full effect to this Act.

**28.** Sections one hundred and forty-seven and one hundred and forty-eight of the Companies Act, 1933, shall not apply to a co-operative dairy company which is registered under this Act, or whose articles of association provide for its registration under this Act.

**29.** The enactments specified in the *Second Schedule* to this Act are hereby repealed.

1937, No. 37

Regulations.

Sections 147  
and 148 of  
the Companies  
Act, 1933, not  
to apply to  
co-operative  
dairy  
companies.  
*Cf.* 1908,  
No. 37, s. 55  
1933, No. 29

Repeals.

Schedules.

## SCHEDULES

Section 3 (1)

## FIRST SCHEDULE

## MODEL ARTICLES OF ASSOCIATION OF A CO-OPERATIVE DAIRY COMPANY

1. These Articles adopted by special resolution of the Company on the            day of           , 19   , are in substitution for the Articles of the Company heretofore in force.

2. The Company shall be entitled to be registered as a co-operative dairy company under the Co-operative Dairy Companies Act, 1949.

3. Table A in the Second Schedule to the Companies Act, 1933, shall not apply to the Company, but these shall be the Articles of Association of the Company subject to alteration as by law provided.

*Interpretation*

4. (1) In these Articles, unless the context otherwise requires,—

“ The Act ” means the Companies Act, 1933, as modified by any statute for the time being in force:

“ These Articles ” include any amendment or extension thereof for the time being in force:

“ The Company ” means the (*Name*) Co-operative Dairy Company, Limited:

“ Dairy-produce ” means milk, cream, or butterfat; and includes any other product of milk or cream:

“ Directors ” means the directors for the time being of the Company:

“ Financial year ” means the period of twelve months ending on the expiration of the            day of           :

“ Member ” or “ shareholder ” means the holder for the time being of a share in the Company:

“ Standard of shareholding ” or “ share standard ” means the number of pounds of butterfat in the milk or cream or the number of gallons or pounds weight of milk from time to time fixed in accordance with these Articles in respect of which the supplier thereof is required to hold one share in the Company:

“ Supplying shareholder ” has the same meaning as in the Co-operative Dairy Companies Act, 1949:

Expressions defined in the Act have the meanings so defined.

(2) Subject to the provisions of the Co-operative Dairy Companies Act, 1949, the decision of the directors as to whether any person is at any time a supplying shareholder of the company shall be final.

*Shares*

5. Subject to the provisions of these Articles, the share shall be under the control of the directors, who may dispose of the same to such persons on such terms and conditions and at such times as they think fit; and in particular, but without in any way limiting their powers, the directors may divide the said shares into classes, groups, or sections, and may attach to any class, group, or section such special rights and privileges or make any class, group, or section subject to such special restrictions or obligations as they think fit.

6. If at any time the capital is divided into different classes, groups, or sections of shares, the rights attached to any class, group, or section, unless otherwise provided by the terms of issue of the shares of that class, group, or section, may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, group, or section then held by supplying shareholders or with the sanction of an extraordinary resolution passed at a separate general meeting of those holders of the shares of the class, group, or section who are supplying shareholders. To every such separate general meeting the provisions of these Articles relating to general meetings shall, with the necessary modifications, apply, but so that the necessary quorum shall be five supplying shareholders holding or representing by proxy one-third of that portion of the issued shares of the class, group, or section held by supplying shareholders, and that any holder of shares of the class, group, or section present in person or by proxy (being a supplying shareholder) may demand a poll.

7. The Company shall be entitled to treat the person whose name appears on the register in respect of any share as the absolute owner thereof, and shall not be under any obligation to recognize any trust or equity, or partial, equitable, or other claim to or interest in any share, whether or not it shall have express or other notice thereof.

8. If several persons are registered as joint holders of any share, any one of those persons may give effectual receipts for any moneys payable in respect of that share.

9. The directors may cancel the allotment or issue of shares on any terms not involving an illegal reduction of capital.

*Certificates*

10. Every person whose name is entered as a member in the register of members shall, without payment, if the directors deem it expedient to issue certificates, be entitled to a certificate under the seal of the Company specifying the share or shares held by him and the amount paid up thereon: Provided that in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

11. If a share certificate is defaced, lost, destroyed, or worn out it may be renewed on payment of such fee, if any, not exceeding 2s. 6d., and on such terms, if any, as to evidence and indemnity and delivering up of a defaced or worn out certificate, as the directors think fit.

#### *Calls*

12. Unless otherwise expressly determined by the directors, the whole of the moneys payable on every share shall forthwith on allotment, without any call being formally made, thereupon become due and payable to the company at the registered office of the Company. The directors may, however, for as long as a member is supplying dairy-produce to the company, refrain from requiring payment forthwith of the moneys payable on shares in cash and may deduct on account of the said moneys such amounts by way of instalments as the directors think fit from the progress or other payments due by the Company to the member until the whole amount of the moneys payable by the member on shares held by him has been paid: Provided, however, should any member cease or fail to supply dairy-produce in accordance with any contract made between him and the Company or in accordance with these Articles in respect of the supply of dairy-produce as aforesaid, the directors may serve upon him notice in writing to pay to the Company forthwith the amount due by him on any or all of the shares held by him in the capital of the Company, and that amount shall thereupon become payable as herein provided.

13. Subject to the provisions of the *last preceding* regulation, the directors may from time to time make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them respectively and which are not by the conditions of allotment thereof made payable at fixed times. Each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the directors. A call may be made payable by instalments.

14. Fourteen days' notice of any call shall be given specifying the time and place of payment and the person or persons to whom the call shall be paid. The directors may deduct from any moneys due by the Company to any member, whether as monthly payments or otherwise, the whole or any part of the amount due by the member to the Company for or in respect of arrears of calls on the shares held by the member.

15. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

16. A call shall be deemed to have been made at the time when a resolution of the directors authorizing the call was passed.

17. If the call payable in respect of any share be not paid on or before the day appointed for payment thereof, the holder for the time being of the share shall be liable to pay interest on the same at such rate as the directors may determine not exceeding the rate of £6 per centum per annum from the day

appointed for payment thereof to the time of actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

18. On the trial or hearing of any action for the recovery of any money due for any call, it shall be sufficient to prove that the name of the member sued is entered in the register of members of the Company as the holder or one of the holders of the shares in respect of which the debt accrued, that the resolution making the call is duly recorded in the minute-book, and that notice of the call was duly given to the member sued in pursuance of these Articles. It shall not be necessary to prove the appointment or qualification of the directors who made the call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt.

19. Notwithstanding anything contained herein or in any rule of law to the contrary, the directors may, if they deem it advisable so to do, call up the balance due by any member upon his shares without the necessity of making a similar call on all or any of the other members for the time being.

*Forfeiture of Shares*

20. If any member fails to pay any call or instalment of a call on or before the day appointed for payment thereof, the directors may at any time thereafter during such time as the call or instalment remains unpaid serve notice upon the member requiring him to pay the call or instalment, together with interest and any expenses that may have accrued by reason of the non-payment.

21. The notice shall name a further day (not being less than ten days from the date of the notice) on or before which the call or instalment and all interest and expenses (if any) that have accrued by reason of the non-payment are to be paid.

22. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call or instalment is made will be liable to be forfeited.

23. If the requirements of any such notice as aforesaid are not complied with, any shares in respect of which the notice has been given may at any time thereafter, before payment of all calls or instalments, interest, and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

24. Any share or shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the directors think fit and as these Articles permit.

25. Any member whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall nevertheless be liable to pay and shall forthwith pay to the

Company all calls, instalments, interest, and expenses owing upon or in respect of the shares at the time of the forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of £6 per centum per annum; but his liability shall cease if and when the Company receives payment in full of the amount so owing by the member.

26. A statutory declaration in writing that the declarant is a director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share. The Company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase-money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

27. The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

28. If all calls, instalments, and interest due in respect of any forfeited share are paid before the share has been disposed of, together with such sum as the directors may require to repay expenses incurred in respect of the non-payment as aforesaid, the forfeiture may be remitted by the directors at their discretion; and if the forfeiture be so remitted and an entry thereof made in the minutes of the directors, the share shall then revert to the person entitled thereto before the forfeiture and be held by him thereafter in the same manner as if no such forfeiture had taken place.

#### *Transfer of Shares*

29. The instrument of transfer of any share shall be in such form as the directors may from time to time prescribe. It shall be executed by both transferor and transferee, and the transferor shall be deemed to remain a holder of any share until the transferee is entered in the register-book in respect thereof.

30. The directors may, in their absolute discretion, refuse to register any transfer of a share.

31. If the directors refuse to register a transfer of any share, they shall within two months after the date on which the transfer was lodged with the Company send to the transferee notice of the refusal.

32. There shall be payable to the Company on the registration of every transfer of a share such sum as the directors may from time to time fix, but not exceeding the sum of 2s. 6d. in respect of each transfer so lodged for registration.

33. Every instrument of transfer shall be left at the registered office of the Company for registration, and the certificate of the share expressed to be transferred shall be produced (if issued) and such other evidence given as the directors may require to show the right of the transferor to make the transfer.

34. The transfer books and register of members may be closed during such time as the directors think fit not exceeding in the whole thirty days in each year.

35. No transfer shall be made to an infant or person of unsound mind.

36. All instruments of transfer shall when registered be retained by the Company, but any instrument of transfer which the directors may decline to register shall be returned to the person depositing the same.

*Transmission of Shares*

37. The legal personal representative of a deceased sole holder of a share shall be the only person recognized by the Company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal personal representative of the deceased survivor, shall be the only person recognized by the Company as having any title to the share. This regulation shall be read subject to the provisions of section 6 of the Statutes Amendment Act, 1941, or of any enactment passed in substitution therefor.

38. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, upon such evidence being produced as may from time to time be properly required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

39. Where the registered holder of any share dies or becomes bankrupt, his personal representative or the assignee of his estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the directors in that behalf, be entitled to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt. Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall for the purposes of these Articles be deemed to be joint holders of the share.

*Lien on Shares*

40. The company shall have a lien for all debts, obligations, and liabilities of any member of the Company upon all shares held by the member, whether alone or jointly with another person or other persons, and upon all dividends, rebates, bonuses, allowances, and other payments which may be declared in respect of the shares: Provided always that if the Company shall register any transfer of any share upon which it has such a lien as aforesaid without giving to the transferee notice of its claim, the said share shall be freed and discharged from the lien of the Company.

41. The Company may sell, in such manner as the directors think fit, any share on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled thereto by reason of his death or bankruptcy.

42. For giving effect to any such sale the directors may authorize some person to transfer the share sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

43. The proceeds of the sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale.

*Increase of Capital*

44. The Company in general meeting may from time to time increase the capital by the creation of new shares of such amount as may be agreed upon.

45. Any capital raised by the creation of new shares shall be considered as part of the original capital, and all the regulations in these Articles contained respecting the original capital shall, except where otherwise provided, be applicable thereto.

*Reduction of Capital and Subdivision of Shares*

46. The Company may by ordinary resolution—

- (a) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares:
- (b) Subdivide its existing shares, or any of them, into shares of smaller amount than is fixed by the Memorandum of Association, subject, nevertheless, to the provisions of section 62 (1) (d) of the Act:



(c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

47. The Company may by special resolution reduce its share capital and any capital redemption reserve fund in any manner and with and subject to any incident authorized and consent required by law.

*General Meetings*

48. A general meeting shall be held once in every calendar year, at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be determined from time to time by the directors. Unless otherwise determined from time to time by the directors, the annual general meeting shall be held in the month of \_\_\_\_\_ in every year.

49. The above-mentioned general meetings shall be called ordinary general meetings. All other general meetings of the Company shall be called extraordinary general meetings.

50. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any number of members holding at the date of the deposit of the requisition not less than one-tenth in nominal value of such of the shares of the Company as at the date of the deposit carry the right of voting at general meetings of the Company, convene an extraordinary general meeting.

51. Any such requisition shall specify the objects of the meeting and shall be signed by the persons making the same and shall be deposited at the registered office of the Company. It may consist of several documents in the like form each signed by one or more of the requisitionists. The meeting must be convened for the purposes specified in the requisition and for those purposes only.

52. If the directors do not within twenty-one days from the date of the deposit of the requisition proceed to convene an extraordinary general meeting to be held within forty days from the said date, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves convene a meeting, but any meeting so convened shall not be held after the expiration of three months from the said date.

53. Subject to the provisions of section 125 (2) of the Act relating to special resolutions, seven clear days' notice specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of that business shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but with the consent of all the members entitled to receive notice of some

particular meeting, that meeting may be convened by such shorter notice and in such manner as those members may think fit; but the accidental omission to give any such notice to any member or the non-receipt of any such notice by any member shall not invalidate the proceedings at any general meeting.

54. The business of an ordinary general meeting (other than the statutory meeting) shall be to receive and consider the statement of income and expenditure, and the balance-sheet, the reports of the directors and of the auditor, and any matters incidental thereto, to elect directors and other officers in the place of those retiring by rotation, to fix the remuneration of the auditors and the directors, and to decide on the recommendation of the directors as regards dividends, and to transact any other business which, by statute, ought to be transacted at an ordinary meeting. All other business transacted at an ordinary general meeting, and all business transacted at an extraordinary general meeting, shall be deemed special.

#### *Proceedings at General Meetings*

55. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

56. A quorum shall consist of not less than                    supplying  
shareholders personally present and holding or representing by  
proxy not less than                    shares of the Company.

57. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members as aforesaid, shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum be not present, those members who are present shall be a quorum and may transact the business for which the meeting was called.

58. The Chairman of Directors shall be entitled to take the chair at every general meeting, or if there be no such Chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding the meeting, the Deputy Chairman of Directors shall be entitled to take the chair, or if there be no such Deputy Chairman or if at any meeting he shall not be present as hereinbefore provided, the supplying shareholders present shall choose another director as Chairman of the meeting; and if no director be present, or if all directors present decline to take the chair, then the supplying shareholders present shall choose one of their number to be Chairman of that meeting.

59. The Chairman of any meeting at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for twenty-one days or more, notice of the adjourned meeting shall be given as in the case of an original

meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

60. The meetings of the Company shall be regarded as private meetings. Persons other than members may be present thereat only during the pleasure of the Chairman of the meeting.

61. Unless a poll is demanded under the *next succeeding* regulation, every question submitted to a meeting shall be decided in the first instance by a show of hands of the supplying shareholders; and in the case of an equality of votes the Chairman of the meeting shall, both on a show of hands and at a poll, have a casting vote in addition to the vote or votes to which he may be entitled as a supplying shareholder.

62. At any general meeting, unless a poll is (before or on the declaration of the result of a show of hands) demanded by the Chairman of the meeting or by at least five supplying shareholders holding or representing by proxy and entitled to vote in respect of at least one-tenth of the capital held by the supplying shareholders represented at the meeting, a declaration by the Chairman that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority, and an entry to that effect in the book of proceedings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The provision that the five supplying shareholders demanding a poll shall hold at least one-tenth of the capital shall not apply to a poll demanded in respect of a special resolution.

63. If a poll be demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairman of the meeting may direct and either at once or after an interval of adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn.

64. Any poll duly demanded on the election of a Chairman of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.

65. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

#### *Votes of Members*

66. Votes may be given either personally or by proxy.

67. Notwithstanding anything herein contained to the contrary, no supplying shareholder holding less than \_\_\_\_\_ shares shall be entitled to vote either upon a show of hands, upon a poll, in a postal ballot, or in any way whatsoever.

68. On a show of hands, every supplying shareholder present in person shall have one vote.

69. Upon a poll, every supplying shareholder present in person or by proxy shall be entitled to the number of votes following, that is to say: [*Set out basis of voting desired*].

70. Upon the holding of a postal ballot, every supplying shareholder shall be entitled to the number of votes as set out in the *last preceding* regulation.

71. All other members shall be entitled to be present at all meetings, but shall not be entitled to any vote in respect of the shares held by them, whether on a show of hands, or upon a poll, or otherwise.

72. If any person otherwise entitled by these Articles to a vote be an infant, a mentally defective person, an aged or infirm person, or a convict, he may vote by his guardian or his committee or his manager or his administrator, as the case may be.

73. Where there are joint registered holders of any share and where those joint holders are otherwise qualified to vote, any one of those joint holders may vote at any meeting, either personally or by proxy, in respect of the share as if he were solely entitled thereto; and if more than one of those joint holders be present at any meeting, personally or by proxy, that one of the said persons so present whose name stands first in the register in respect of the share shall alone be entitled to vote in respect of the same. Several executors or administrators of a deceased member in whose sole name any share stands shall, for the purposes of this Article, be deemed to be joint holders thereof. In the event of a postal ballot, the person whose name stands first in the register in respect of the share shall alone be entitled to vote in respect of the same.

74. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing. If the appointer is a corporation, the instrument appointing a proxy shall be under its common seal or the hand of its attorney. All instruments of proxy shall be attested. No person shall be appointed a proxy who is not a supplying shareholder of the Company and qualified to vote, save that a corporation being a member of the Company and qualified to vote may appoint as its proxy any officer of the corporation, whether a supplying shareholder of the Company or not.

75. A proxy may be appointed generally or for a specified period or specified meeting; and every instrument of proxy shall, as nearly as the circumstances will admit, be in the form or to the effect following:—

I, \_\_\_\_\_, of \_\_\_\_\_, being a supplying shareholder of the \_\_\_\_\_ Co-operative Dairy Co., Ltd., hereby appoint \_\_\_\_\_ of \_\_\_\_\_, being a supplying shareholder, or, failing him, \_\_\_\_\_, being also a supplying shareholder, as my proxy to vote for me and on my behalf at the ordinary (or extraordinary, as the case may be) general meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ : and at any adjournment thereof.

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

76. The instrument appointing a proxy and the power of attorney (if any) under which it is signed or a certified copy thereof shall be deposited at the registered office of the Company not less than forty-eight hours before the time for holding the meeting or adjourned meeting (as the case may be) at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

77. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

78. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, provided no intimation in writing of the death, revocation, or transfer has been received at the office of the Company before the meeting.

79. Any instrument appointing a proxy given by a supplying shareholder shall be deemed to be revoked on receipt from the supplying shareholder of a notice in writing to that effect at the office of the Company not less than one hour before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

80. Any corporation which is a member of the Company may, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the Company or of any class of members of the Company, and the person so authorized shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.

*Directors*

81. The number of directors, until altered as herein provided, shall be not less than            nor more than           , and for this purpose the Managing Director for the time being shall be included in both the numbers.

82. (1) No person shall be qualified to act as a director (other than as Managing Director) unless he is a supplying shareholder of the Company holding not less than            shares in the capital of the Company, or unless he is a member of a company or of a partnership which is a supplying shareholder of the Company and which holds not less than            shares in the capital of the Company, and, in the case of such a company, unless he is qualified to be a director of that company. Only one member of a company or partnership holding shares in the capital of the Company shall be qualified to act as a director of the Company under the provisions of this subclause.

(2) No person shall be qualified to act as a director (other than as Managing Director) unless he or a company or partnership of which he is a member has supplied to the Company in the immediately preceding financial year not less than            pounds of butterfat per medium of milk, cream, or butterfat.

83. A director may retire from his office at any time on giving one month's notice in writing to the Company of his intention so to do, and his retirement shall take effect upon the expiration of the notice or the earlier acceptance of his resignation.

84. No director shall be disqualified by his office from holding any office or place of profit under the Company nor from contracting with the Company either as a vendor, purchaser, or otherwise, nor shall any such contract or arrangement, or any contract or arrangement entered into by or on behalf of the Company with any company or partnership of or in which any

director of the Company is a member or otherwise interested, be avoided, nor shall any director so contracting or being such a member or so interested be liable to account for any profit realized by any such contract or arrangement by reason only of the director holding that office or of the fiduciary relation thereby established, provided the nature of his interest be disclosed by him at the meeting at which the contract or arrangement is determined on (if his interest then exists), or in any other case at the first meeting of the directors after the acquisition of his interest.

85. No director shall as a director vote in respect of any contract or arrangement in which he is so interested as aforesaid, and if he do so vote his vote shall not be counted; but this prohibition may at any time or times be suspended or relaxed to any extent by a general meeting, and this prohibition shall not apply to any contract by or on behalf of the Company to give to the directors or any of them any security for advances or by way of indemnity: Provided, however, that the restriction contained in this and the *last preceding* regulation shall not apply in respect of any contract for the supply by any director or by any company or partnership of which a director is a member of dairy-produce to the Company.

86. A general notice that a director is a member of a specified firm or company and is to be regarded as interested in all transactions with that firm or company shall be a sufficient disclosure under regulation 84 hereof as regards that director and the said transactions, and after that general notice it shall not be necessary for that director to give a special notice relating to any particular transaction with that firm or company.

87. The remuneration of the directors (except that of the Managing Director) shall be determined by the Company in general meeting and shall continue and remain at the amount so fixed unless and until otherwise fixed and determined from time to time by the Company at any subsequent annual general meeting.

88. The directors shall also be entitled to be paid their reasonable travelling, hotel, and other expenses incurred in consequence of their attendance at board meetings or otherwise in the execution of their duties as directors.

#### *Disqualification of Directors*

89. The office of a director shall be vacated—

- (a) If he, not being the Managing Director, ceases to be a supplying shareholder holding at least \_\_\_\_\_ shares in the capital of the Company, or if, in any case where he holds office as a director of the Company by virtue of being a member of a company or partnership which is a supplying shareholder of the Company, he ceases to be a member or to be qualified to be a director of that company, or to be a member of that partnership, as the case may be, or if that company or partnership ceases to be a supplying shareholder holding at least \_\_\_\_\_ shares in the capital of the Company; or

- (b) At the next following ordinary general meeting after the close of the financial year if he, not being the Managing Director, or, in any case where he holds office as a director of the Company by virtue of being a member of a company or partnership holding shares in the capital of the Company, if that company or partnership has failed to supply \_\_\_\_\_ lb. of butterfat per medium of milk, cream, or butterfat during that said financial year; or
- (c) If he becomes bankrupt; or
- (d) If he becomes of unsound mind, or becomes a protected person under the Aged and Infirm Persons Protection Act, 1912; or
- (e) If he resigns his office in accordance with the provisions of regulation 83 hereof; or
- (f) If he is directly or indirectly interested in any contract with the Company or participates in the profits of any contract with the Company, unless he is exempt from disqualification under regulation 84 or regulation 85 hereof; or
- (g) If he becomes prohibited from being a director by reason of any order made under section 216 or section 268 of the Act.

#### *Rotation of Directors*

90. At the next ordinary general meeting, \_\_\_\_\_ of the directors, being the \_\_\_\_\_ who have been longest consecutively in office, shall retire. At the next following ordinary general meeting the \_\_\_\_\_ directors who have then been longest consecutively in office shall retire, and so on in alternate years, \_\_\_\_\_ directors and \_\_\_\_\_ directors respectively shall retire from office. As between two or more directors who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot. The length of time a director has been in office shall be computed from his last election or appointment where he has previously vacated office.

#### *Eligibility for Office as a Director*

91. A retiring director shall be eligible for re-election. Subject to the provisions of regulation 94 hereof, he shall retain office until the dissolution or adjournment of the meeting at which his successor is appointed.

92. No person (not being a retiring director) shall, unless recommended by the directors for election, be eligible for election to the office of director at any general meeting unless he has been nominated in writing. Every such nomination must be made and signed by two supplying shareholders (other than the person nominated) as nominator and seconder, and must be signed by the person nominated signifying his acceptance of nomination. Every nomination-paper must be left at the registered office of the Company addressed to the Secretary, not later than three clear days before the meeting.

*Filling of Vacancies*

93. Subject to the provisions of regulation 95 hereof, the Company at any general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of qualified persons to be directors, and without notice in that behalf may fill up any other vacancies.

94. If at any general meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, the retiring directors or such of them as have not had their places filled up shall, if willing and not disqualified, continue in office until the ordinary general meeting in the next year, and so on from year to year until their places are filled up, unless it shall be determined at any such meeting to reduce the number of directors. If any question should arise as to which directors have not had their places filled up, the matter shall be determined by the directors then in office, whose decision shall be final.

*Increase or Reduction in Number of Directors*

95. The Company in general meeting may from time to time increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

*Removal of Directors*

96. The Company may by extraordinary resolution remove any director before the expiration of his period of office and appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Casual Vacancies*

97. Any casual vacancy occurring among the directors may be filled up by the directors, or in their discretion they may call an extraordinary general meeting for the purpose of filling up any such casual vacancy, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

98. The remaining directors may continue to act notwithstanding any vacancy in their number by death, resignation, or otherwise; but if the number of directors in such case falls below the minimum fixed by these Articles the directors shall not, except for the purpose of filling vacancies, act so long as the number is below the said minimum.

*Indemnity of Directors*

99. Any director, manager, officer, or auditor shall be indemnified against any liability incurred by him as such director, manager, officer, or auditor in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 381 of the Act in which relief is granted to him by the Court.



100. If the directors or any of them or any other person shall become personally liable for the payment of any sum primarily due from the Company, the directors may execute or cause to be executed any mortgage, charge, or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the directors or person so becoming liable as aforesaid from any loss in respect of that liability.

*Managing Director*

101. The directors may from time to time appoint a suitable person to be the Managing Director of the Company for such term (not exceeding seven years), at such remuneration, and generally on such terms and conditions as they may think fit; and may, subject to any contract between him and the Company, from time to time remove or dismiss him from office and appoint another in his place. Subject to the terms and conditions of any agreement between the Company and its Managing Director, the general and routine business of the Company shall be managed by the Managing Director, who shall at all times faithfully observe and obey all resolutions of the directors, but, subject thereto, he shall have full power and authority to engage, suspend, or discharge all or any of the employees and servants of the Company and to fix their respective salaries, wages, or remuneration, to buy and sell, and to enter into all contracts, and generally to do all such acts and things that he may deem expedient in carrying on the ordinary business of the Company.

102. A Managing Director shall not while he holds office as such be subject to retirement by rotation, and shall not be taken into account in determining the rotation or retirement of directors, but (subject to the provisions of any contract between him and the Company) he shall be subject to the same provisions as to resignation and removal as the other directors of the Company.

*Proceedings of Directors*

103. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and may determine the quorum necessary for the transacting of business. Until otherwise determined, three directors shall be a quorum. A director interested in any contract with the Company is to be counted in a quorum, notwithstanding his interest.

104. Two directors may at any time, and the Secretary upon the request of two directors shall, convene a meeting of directors.

105. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman of that meeting shall have a second or casting vote.

106. The directors shall elect one of their number as Chairman of the Company, and, if they think fit, one of their number as Deputy Chairman of the Company. The directors shall determine the period for which the Chairman and the Deputy Chairman (if appointed) are to hold office, and, unless otherwise determined, they shall be elected annually.

107. The Chairman of the Company shall preside at each meeting of the directors, and in case of his absence or incapacity to act at any meeting, the Deputy Chairman, if there has been one appointed, shall preside. In the absence from any meeting of the directors or inability to act of the Chairman of the Company and of the Deputy Chairman (if any) the directors present shall choose one of their number to be chairman of the meeting.

108. The directors may delegate any of their powers to the Managing Director or to a committee or committees consisting of such members or member of their body as they think fit, and may from time to time revoke any such delegation. The Managing Director or any such committee or committees shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on him or it or them by the directors.

109. The regulations herein contained for the meetings and proceedings of directors shall, so far as not altered by any regulations made by the directors, apply also to the meetings and proceedings of any committee.

110. All acts done at any meeting of the directors or of a committee of directors or by the Managing Director or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of those directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director or the Managing Director.

111. A resolution in writing signed by all the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

#### *Minutes*

112. The directors shall cause minutes to be duly entered in books provided for the purpose—

- (a) Of the names of the directors present at each meeting of the directors and of any committee of directors:
- (b) Of all resolutions and proceedings of general meetings and of the meetings of the directors and committees,—and any such minutes of any meeting of the directors, or of any committee, or of the Company, if purporting to be signed by the chairman of the meeting, or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in the minutes.

#### *Powers of Directors*

113. The management of the business of the Company shall be vested in the directors, and the directors may exercise all such powers and do all such acts and things as the Company is by its

Memorandum of Association or otherwise authorized to exercise and do and are not hereby or by statute directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to the provisions of the Act and of these presents and to any regulations not being inconsistent with these presents from time to time made by the Company in general meeting: Provided that no such regulation shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

*Branch Registers*

114. The company may cause to be kept in any place a branch register or branch registers, and may make such provision as it may think fit respecting the keeping or discontinuance of branch registers, subject to any law in force regulating the keeping or discontinuance of branch registers.

*Seal*

115. The seal of the Company shall not be affixed to any document except by the authority of the Board of Directors or of a committee of directors empowered thereto, and in the presence of at least two directors, or of one director and the Secretary, who shall affix their signatures to every document so sealed.

*Accounts*

116. The directors shall cause proper books of account to be kept with respect to—

- (a) All sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place;
- (b) All sales and purchases of goods by the Company; and
- (c) The assets and liabilities of the Company.

117. The books of account shall be kept at the registered office of the Company, or at such other place or places as the directors think fit, and shall always be open to the inspection of any director.

118. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being directors, and no member (not being a director) shall have any right of inspecting any account or book or document of the Company except as conferred by statute or authorized by the directors or by the Company in general meeting.

119. The directors shall from time to time, in accordance with section 131 of the Act, cause to be prepared and to be laid before the Company in general meeting such profit and loss accounts, balance-sheets, and reports as are referred to in that section.

120. A copy of every balance-sheet (including every document required by law to be annexed thereto) which is to be laid before the Company in general meeting, together with a copy

of the auditor's report, shall, not less than seven days before the date of the meeting, be sent to all persons entitled to receive notices of general meetings of the Company.

*Audit*

121. Auditors shall be appointed and their duties regulated in accordance with sections 139, 140, and 141 of the Act.

*Trade Secrets*

122. No member (not being a director of the Company) shall be entitled to require or receive any information concerning any detail of the Company's business, trading, or customers, or any matter which is or may be in the nature of a trade secret, mystery of trade, or secret process which may relate to the business of the Company and which in the opinion of the directors it will be inexpedient in the interests of the Company to communicate, beyond such information as is by these Articles or by statute directed to be laid before the Company in general meeting; and no such member shall be entitled to inspection of any books, papers, correspondence, or documents of the Company except so far as inspection thereof is expressly authorized by statute or by these presents.

*Winding-up*

123. (1) If the Company be wound up and the assets available for distribution amongst the members as such are insufficient to repay the whole of the paid-up capital, those assets shall be distributed so that, as nearly as may be, the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding-up on the shares held by them respectively, other than amounts paid in advance of calls.

(2) If in a winding-up the assets available for distribution amongst the members are more than sufficient to repay the whole of the capital paid up at the commencement of the winding-up, the excess shall be distributed amongst the members in proportion to the capital paid up at the commencement of the winding-up or which ought to have been paid up on the shares held by them respectively, other than amounts paid in advance of calls.

(3) This regulation shall not affect the rights of the holders of shares issued upon special terms or conditions.

*Notices*

124. (1) A document may be served on the Company by leaving it at the Company's registered office, or by sending it through the post in a registered letter addressed to the Company at that office.

(2) Any document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of post within the period (if any) prescribed for the service thereof; and in proving service of any such

document it shall be sufficient to prove that it was properly directed and that it was duly put into the post-office as a registered letter.

125. Any notice requiring authentication by the Company may be signed by a director, manager, or other officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print or partly in writing and partly in print. The signature to any notice to be given by the Company may be written, typewritten, or printed.

126. A notice may be given by the Company to any member either personally or by sending it by ordinary post addressed to him at his registered address, or (if he has no registered address within New Zealand) to the address (if any) within New Zealand supplied by him to the Company for the giving of notices to him. Where the notice is sent by post, service of the notice shall be deemed to have been effected in the case of a notice of a meeting at the expiration of twenty-four hours after the letter containing the same is posted as aforesaid, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

127. A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the register of members in respect of the share.

128. A notice may be given by the Company to any person entitled to a share in consequence of the death or bankruptcy or other incapacity of a member by sending it through the post in a prepaid letter addressed to him by name or by the title of representative of the deceased or assignee of the bankrupt or otherwise, as the case may require, at the address (if any) within New Zealand supplied for the purpose by the person claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy or incapacity had not occurred.

129. Every person who by operation of law, by transfer, or by other means whatsoever shall become entitled to any share shall be bound by every notice in respect of that share which previously to his name and address being entered on the register has been duly given to the person from whom he derives his title to that share.

130. Where a given number of days' notice or notice extending over any period is required to be given, the day of service shall not be, but the day upon which the notice will expire shall be, included in the number of days or other period.

131. Each member whose registered place of address is not in New Zealand may from time to time notify in writing to the Company some place in New Zealand which shall be deemed his registered place of address for the purpose of regulation 126 hereof; but in the absence of any such notification he shall not be entitled to have any notice or voting-paper sent to him from the Company, whose registered office shall be deemed the

registered address of the member for all purposes whatever, and all proceedings taken without other notice to any such member shall be as valid as if he had due notice thereof.

*Terms of Supply*

132. All dairy-produce supplied to the Company by any person shall, except as may otherwise be agreed upon in writing, be deemed to be supplied upon the terms set out in these Articles.

*Shareholding by Suppliers*

133. Subject to the provisions of the *last preceding* regulation, the supply by any person of dairy-produce to the Company shall in itself be deemed to be an irrevocable application by that person to become a member of and to accept such shares in the Company as he shall be required to hold in accordance with these Articles, and it shall be lawful for the directors, without any other application therefor, to allot immediately such number of shares as they think will be required by him on their estimate of the probable quantity of his supply of dairy-produce, or the directors may in their discretion, defer the allotment of those shares until the quantity so supplied for the particular financial year is ascertained; and those persons shall be entitled to the allotment of shares accordingly: Provided that no person shall be so entitled to the allotment of shares should his supply or estimated supply of dairy-produce be less than the equivalent of        lb. of butterfat in the financial year in question or should he, in the opinion of the directors, be unlikely to become a supplying shareholder of the Company.

134. Each person supplying dairy-produce shall, in respect of the financial year of the Company in which he is so supplying, be required to hold such number of shares as may from time to time be fixed by the directors, but being not more than one share for every        lb. of butterfat obtained or obtainable from the dairy-produce or, alternatively, for every        gallons or        lb. of milk supplied by him or which in the estimation of the directors he will supply during that financial year.

135. If on the last day of any financial year of the Company it appears by the books of the Company that any member has held a smaller number of shares in the Company than is required to be held by him in terms of the *last preceding* regulation, it shall be lawful for the directors immediately to allot to him, without any application therefor by or on behalf of that member, such further number of shares as shall be required to bring the number of shares held by him up to the number required to be held by him in terms of these Articles.

136. In lieu of allotting the full number or estimated number of shares required to be held by any member under regulations 133, 134, and 135 hereof, the directors may at any time and from time to time, until the member has been allotted the total number of shares which he is required to hold under those regulations,

apply any amounts payable to that member under regulation 140 (1) hereof in the payment in full of such number of fully-paid shares as can be paid up in full out of those amounts, and may apply any remaining part of the said amounts in part payment of another share in the Company; and the directors shall allot the said fully-paid shares and any such partly-paid share to the member accordingly.

#### *Payments and Returns*

137. All dairy-produce supplied to the Company shall be handled, manufactured, or rendered marketable by the Company, and shall be disposed of by the Company in such manner and on such terms and in such places or markets, whether within or outside New Zealand, as the directors shall in their uncontrolled discretion consider advisable or as may be required by law.

138. (1) The net annual returns arising from or in relation to such dairy-produce shall, as at the last day of each financial year, be arrived at by deducting from the gross returns the whole or so much thereof as the directors consider equitable of the following:—

- (a) The costs, charges, and expenses incurred in or about the carrying-out of any of the objects, powers, or authorities of the Company;
- (b) All premiums and allowances of the character specified in regulations 148 and 150 hereof;
- (c) Depreciation of any of the Company's assets;
- (d) Such sums as the directors may consider necessary or desirable to set aside as a reserve fund or for meeting contingencies of any description or for stabilizing or making more uniform progress, final, or other payments to persons supplying dairy-produce to the Company or for any capital expenditure incurred or to be incurred in that or in any other year or for such other purposes as the directors in their absolute discretion think fit:

Provided that nothing contained in this paragraph shall authorize the payment of any dividend on shares out of returns arising from or in relation to dairy-produce supplied to the Company:

- (e) All penalties or charges of the kind specified in regulations 150 and 151 hereof.
- (2) The directors may from time to time use all or any part of the moneys so deducted for all or any of the purposes referred to in the *last preceding* subclause.

#### *Progress Payments*

139. (1) The directors may at any time in respect of the dairy-produce received by the Company during the immediately preceding month make to each person supplying that dairy-produce such progress payments as they deem advisable, having

regard to their estimate of the net returns for that dairy-produce after making such deductions as they consider ought to be made under the *last preceding* regulation.

(2) Progress payments under the *last preceding* subclause shall be due and payable on the 20th day of the month following the month in which the dairy-produce was supplied or on such other monthly date as the directors from time to time determine.

(3) The directors may if they think fit from time to time in any financial year make further progress payments in respect of dairy-produce supplied to the Company during any previous month or months in that financial year.

(4) Notwithstanding anything contained in the foregoing provisions of this regulation, the directors in their discretion may decide not to make any progress payment in any month or months if they consider it advisable in the interests of the Company not to make any such payment.

#### *Distribution of Net Returns*

140. (1) If the net returns for dairy-produce for any financial year after making such deductions as the directors think fit under regulation 138 hereof exceed the total amount paid out by the Company as progress payments under the *last preceding* regulation, the directors shall in the month of in the next financial year, or in such other month in that year as they from time to time determine, make a final payment (whether by instalments or otherwise) to each supplying shareholder of his due share of those returns in proportion to the dairy-produce supplied by him on such basis as the directors from time to time determine—

(a) By making a payment at a rate fixed by the directors from time to time on the quantity of dairy-produce supplied by the shareholder in respect of which he holds shares in the Company in accordance with the provisions of these Articles:

Provided that the directors may if they think fit make a similar payment in relation to each portion of the dairy-produce supplied by any such shareholder in respect of which he does not hold shares in accordance with the provisions of these Articles so long as the payment is applied by the directors on behalf of the shareholder so far as may be necessary to meet the cost of additional fully-paid shares which the shareholder is required to hold under these Articles:

(b) By making payment of the balance (whether by instalments or otherwise) at the times hereinbefore fixed to the shareholder in proportion to the quantity of dairy-produce supplied by him on such basis as the directors from time to time determine.

(2) If the net returns for dairy-produce for any financial year after making such deductions as the directors think fit under regulation 138 hereof are less than the total amount paid



out by the Company as progress payments under the *last preceding* regulation, the directors may require each supplying shareholder to refund his proportion, based on the progress payments received by him, of the total amount so paid in excess of the net returns for that year; and upon demand therefor being made by notice in writing to the shareholder the amount which he is so required to refund to the Company shall constitute a debt owing by him to the Company and shall be recoverable accordingly in any Court of competent jurisdiction, or may be retained by the Company out of any future payments for dairy-produce due by the Company to that shareholder.

(3) Upon all payments having been made in accordance with subclause (1) of this regulation the Company shall thereupon be deemed to have fully accounted to each supplying shareholder for his full share of the net returns of the dairy-produce supplied by him to the Company in the financial year concerned; but, should the Company later receive further returns or realizations in respect of that dairy-produce, the directors may if they think fit make a further distribution in accordance with the provisions of the said subclause (1), or they may retain those further returns or realizations as part of the returns of the Company in the financial year in which they are received.

#### *Supply from Non-members*

141. The directors may if they think fit so to do purchase dairy-produce at a price determined in accordance with the *next succeeding* regulation from any person who is not a supplying shareholder of the Company without requiring him to take up shares in the Company.

142. (1) All dairy-produce supplied by a person who is not a supplying shareholder of the Company shall, in the absence of any agreement as to price between the Company and that person, be deemed to be purchased by the Company at a price corresponding to that which is paid by the Company to its supplying shareholders as a progress payment for dairy-produce supplied to the end of the month immediately preceding the date of purchase. That person shall not by virtue solely of the fact of his so supplying dairy-produce to the Company be entitled in any way to claim or to participate in any rebates, allowances, or other payments (whether final or otherwise) which in accordance with these Articles the Company may subsequently make to its supplying shareholders.

(2) Nothing contained in the *last preceding* subclause shall in any way limit the powers of the directors under these articles to treat as a supplying shareholder of the Company for the purpose of making payments for dairy-produce purchased from him any person who, though not a supplying shareholder of the Company, has in the opinion of the directors substantially complied with the meaning of the term "supplying shareholder" in regulation 4 hereof.

(3) If any payment is made to a person who is not a supplying shareholder of the Company in respect of dairy-produce supplied by him which, if he were a supplying shareholder, would be repayable by him under subclause (2) of regulation

140 hereof, the directors may require him to refund the amount so paid in excess. Any amount so paid in excess shall, on being demanded by the directors by notice in writing (which may be given to him in the same way as if he were a shareholder of the Company), constitute a debt owing by that person to the Company and shall be recoverable accordingly in any Court of competent jurisdiction, or may be retained by the Company out of any future payments which may become due to him by the Company in respect of dairy-produce supplied by him to the Company.

#### *Rebates*

143. The directors may from time to time allow to members purchasing goods, supplies, or services from the Company such rebate, allowance, or commission as they think fit; and they may, in addition thereto, if they think proper, from time to time allocate to and distribute on such basis as they consider equitable by way of bonus or otherwise amongst those members all or any part of the surpluses resulting from those operations.

#### *Other Income*

144. All income of the Company or any part thereof (other than income arising from or in relation to supply or sale of dairy-produce) may, at the discretion of the directors, be transferred and added to the net annual returns set out in subclause (1) of regulation 138 hereof, or, if so recommended by the directors, the Company in general meeting may distribute the same amongst all members in proportion to the capital paid up on the shares held by them respectively. Should such other income of the Company or any part thereof be so divided amongst all members in proportion to the capital paid up on the shares held by them respectively, no interest shall be payable thereon by the Company if any such dividend should remain unclaimed for any period. If any such dividend should remain unclaimed for a period of five years after the declaration thereof, the directors may forfeit the same for the benefit of the Company.

#### *Lien for Goods Supplied*

145. The Company shall have a first and paramount lien for moneys due by any supplier or member for goods, stores, merchandise, or other chattels or services supplied to him and for the debts, liabilities, and engagements (whether solely or jointly with any other person to or with the Company) of any supplier or member upon the moneys due to any supplier or member for any dairy-produce and upon all the shares aforesaid in the name of each member, whether solely or jointly with any other person. The lien shall extend to all dividends from time to time declared in respect of the shares. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's lien on the shares. The provisions of regulations 40 to 43 hereof shall apply to any lien on shares under this regulation.

*Right to Deduct for Goods Supplied*

146. The Company may before payment deduct from the moneys which would otherwise be due or become due to a supplier or member for dairy-produce supplied the moneys due for goods, stores, merchandise, or other chattels or services supplied to him, and the balance only shall accrue due to the supplier or member.

*Assignments of Moneys Payable to Members*

147. The Company shall be entitled to make such charge as it may be permitted by law so to do to cover the cost of accounting in respect of any assignments given or orders made by any person or member on moneys payable to him for dairy-produce supplied by him to the Company.

*Premiums in Respect of Dairy-produce*

148. The directors may fix and pay from time to time such premiums or allowances to individual members or persons or sections or groups of members or persons in respect of the supply of dairy-produce of any particular type or in any particular form or during any particular period or at any particular factory, place, or times as they from time to time consider to be necessary.

*Grading of Dairy-produce*

149. The directors may from time to time, in their sole discretion, grade or class, and regrade or reclass, all dairy-produce supplied to the Company, and they may in such manner as they think fit, subject to the provisions of the Dairy Industry Act, 1908, or of any other Act or rule of law, fix the various grades or classes into which the said produce so supplied shall be placed. In fixing those grades and classes the directors may take into consideration the quality and effect of that produce upon the articles manufactured by the Company, and may also have regard to such other matters as they think fit in the best interests of the Company.

150. The directors may grant and pay from time to time premiums or allowances for various quality grades or classes of dairy-produce, and may fix and deduct various penalties for grades or classes of dairy-produce not of the finest grade or quality, and for these purposes the directors may employ the grading and classification fixed under the *last preceding* regulation.

*Small Supplies of Dairy-produce*

151. The directors may from time to time, for the purpose of meeting or partly meeting the additional cost (if any) of the transport, handling, manufacture, and administration of small supplies of dairy-produce, make such charge per supplying member or person or at such varying rates in respect of different quantities of dairy-produce supplied during the particular financial year as they deem equitable.

*Control of Supply of Produce*

152. (1) The directors may in their discretion from time to time refuse to accept any dairy-produce or part thereof supplied by any person, if in their opinion—

- (a) That dairy-produce is not sweet, wholesome, sound, and free from any foreign extraneous substance or liquid, and its acceptance is not otherwise prohibited by law; or
- (b) That person has been dishonest in his dealings with the Company; or
- (c) The farmyard surroundings or place from which the dairy-produce is obtained are dirty or unhealthy; or
- (d) That person or his family or assistants or their families are suffering from any infectious disease which might detrimentally affect dairy-produce:
- (e) It would not be in the interests of the Company to accept that dairy-produce.

(2) The directors shall be under no liability to make any recompense to any such person for any such refusal, and that person shall have no recourse against either the Company or the directors or any of them whatsoever in respect to that refusal.

153. If any or all of the operations of the Company at any one or more of its branches, factories, or creameries are delayed, hampered, impeded, or in way prevented by any strike, lock-out, or other stoppage, whether of the employees of the Company or otherwise, the directors, if possible, shall immediately do all in their power and take all necessary steps to remove or alleviate the cause of the delay, hampering, impediment, or prevention of work; but during the continuation of the strike, lock-out, or other stoppage of work as aforesaid the directors may, in their discretion, refuse to accept any dairy-produce tendered by any member or other person at any one or more of the branches, factories, or creameries which are or may be in the opinion of the directors prejudicially affected by that strike, lock-out, or other stoppage as aforesaid: Provided, however, that if any other branch, factory, or creamery of the Company is not prejudicially affected thereby the directors shall endeavour to arrange for that branch, factory, or creamery to accept the said dairy-produce. The directors may continue so to refuse to accept the said produce for so long a period as they in their discretion may deem advisable, having regard to the best interests of the Company; and during the term of that refusal they shall be under no duty or liability to make any recompense to any such member or person in respect of any such refusal as aforesaid, and the said member or person shall have, in respect of the said refusal, no recourse whatsoever against the Company or its directors or any of them.

154. (1) All dairy-produce for delivery to the Company shall be—

- (a) Made available by the person so supplying either at his milk-shed, farm gate, roadside, or depot, or the receiving-stage of the nearest factory of the Company manufacturing dairy-produce of the type for delivery, or other convenient place, as the directors shall from time to time require, and either once daily or twice daily or at longer intervals as the directors shall from time to time require:
  - (b) Made available in containers of a type suitable for convenient and economical transport, handling, and cleaning, or, in the discretion of the directors, held in a suitable vat convenient for bulk collection of the dairy-produce therefrom by or on behalf of the Company:
  - (c) Placed upon a properly constructed stand (with efficient to and fro all-weather access by the transporting vehicle of the type used for such transport work) at such times of the day as the directors may from time to time stipulate or as are by law required, unless the dairy-produce is required to be delivered to a depot owned or controlled by the Company or upon the factory receiving-stage as hereinbefore provided, in which case delivery shall be made at such times of the day as the directors from time to time stipulate.
- (2) The person supplying dairy-produce shall be responsible for the cleanliness thereof.
- (3) Morning milk shall be kept in separate containers from afternoon milk.

155. The directors may from time to time, in lieu of requiring delivery by suppliers of dairy-produce as provided in the *last preceding* regulation,—

- (a) Undertake on behalf of those suppliers or of any groups thereof the collection of their dairy-produce on such terms as the directors consider equitable, with or without a general charge on the dairy-produce of those suppliers or groups of suppliers or different charges to individual suppliers or to different groups of suppliers as the directors consider to be in the best interests of the Company; or
- (b) Make any payment or allowance to those suppliers or groups of suppliers as a consideration for delivery by them in any particular manner, time, or place, as the directors think fit.

156. Where milk is delivered to the Company for cheese or casein making the person supplying the same shall, in the absence of any agreement to the contrary between that supplier and the Company, be responsible to the Company for the prompt removal of his proportion of the resulting whey.

*Special Groups*

157. (1) The directors may from time to time establish and carry on factories and creameries for the manufacture and for the handling of butter, cheese, dried milk in any of its various forms, casein, processed cheese, town milk, ice-cream, or any other dairy-products or any other products which in the opinion of the directors can be conveniently manufactured or dealt in in conjunction therewith or any combination thereof. These functions may be operated by separate and distinct classes, groups, or sections of members (hereinafter referred to as special groups). Save as herein provided, all the provisions of these Articles shall, so far as applicable and with the necessary modifications, apply to those special groups.

(2) Any adjustments as between the Company and any special group or as between one special group and another special group shall be clearly shown in the accounts laid before the annual general meeting of the Company.

158. The directors may at any time and from time to time amalgamate any special group with any other special group or may conduct the operations of any of the special groups on behalf of the Company as a whole or extend the operations of any existing group as they think fit.

159. No member or person shall without the prior written consent of the directors be entitled to supply any special group or to transfer his supply of dairy-produce to or from any special group or to supply a quantity of dairy-produce to any special group substantially greater than that which was supplied by him to that special group in the immediately preceding season.

160. (1) Every person supplying dairy-produce to a special group shall, in respect of the financial year of the Company in which he is so supplying, be required to hold such number of shares as may from time to time be fixed by the directors for that particular special group, but not being more than one share for the number of pounds of butterfat obtained or obtainable or, alternatively, for the number of gallons or weight of milk estimated to be supplied or supplied by him during that financial year as are set out in the *next succeeding* subclause opposite the name of the special group; but nothing herein shall entitle the directors to fix a share standard of less than \_\_\_\_\_ lb. of butterfat or \_\_\_\_\_ gallons or \_\_\_\_\_ lb. of milk for any special group formed after the date these Articles came into force or for a special group for which there was no share standard operating at that date. If any person is supplying dairy-produce to more than one special group, he shall be required to hold shares as herein provided in each such group to which he is supplying dairy-produce.

(2) The special groups and their share standards are as follows:—

[Set out names of special groups and their share standards.]

161. Without limiting the authority of the directors to agree with any member as to the resumption value of any share held by that member, the directors may have regard to the assets and liabilities of any special group as may be shown in the

accounts thereof for the purpose of fixing any such resumption value. Nothing herein, however, shall be construed as an appropriation of the net assets of any special group to its particular class of share.

162. The net annual returns arising from or in relation to the dairy-produce supplied to any special group shall at the last day of each financial year be ascertained by deducting from the gross returns such part of the deductions provided for in sub-clause (1) of regulation 138 hereof as the directors may consider equitable and shall be distributable amongst the supplying shareholders supplying dairy-produce to that special group as if that special group were a separately operated and conducted co-operative dairy company, and the provisions of regulations 138, 139, 140, 141, and 142 hereof shall, so far as applicable and with the necessary modifications, apply thereto.

163. Notwithstanding anything herein to the contrary, the directors may from time to time utilize, on behalf of any other special group or of the Company as a whole, the whole or any part of the produce of any special group, either in its original state or in a manufactured or partly manufactured state, in the manufacture of any particular product or for sale in its original state on such basis or bases as the directors shall deem equitable, and the allowance for that produce to the special group making it so available shall be deemed to be part of its market realizations.

164. The whole or any part of any reserve now heretofore or hereafter set aside out of the returns of any special group may during the financial year in which it is so set aside or in any subsequent financial year be transferred to the gross returns of the Company as a whole or to those of any other special group or groups, in any case where in the opinion of the directors it is equitable to do so because of the assistance given by the Company as a whole in the financing and conducting of the operations of any such special group, or because of the necessity for the arbitrary selection of that group to manufacture or deal with particular types of dairy-produce for which the net monetary return on a butterfat basis may be in excess of the probable net monetary return on a butterfat basis for the dairy-produce manufactured or dealt with by other special groups or by the Company as a whole, or for any other good and sufficient reason.

#### *Committees of Suppliers of Special Groups*

165. (1) Without in any way limiting the authority of the directors, they may from time to time set up a committee of suppliers from any special group of the Company for the purpose of advising the directors upon matters and things relating to the conduct and management of their own special group.

(2) Notwithstanding that there may be a committee of suppliers for the group, the directors may at any time and from time to time if they think fit call a meeting of the supplying shareholders of any special group so that they might obtain an expression of its views upon any matters and things relating to its affairs. Any meetings of the supplying shareholders of any group shall be conducted as nearly as possible in accordance

with the rules set out in these Articles for the conduct of general meetings. In lieu of calling a meeting of the supplying shareholders as hereinbefore set out, the directors may conduct a postal ballot among the supplying shareholders of any special group in such manner as the directors think fit. Any resolution passed at any such meeting or by three-fourths of the valid votes cast in a postal ballot as aforesaid shall be deemed to be a resolution of all and every one of the members of the special group and shall be binding upon them accordingly.

166. The directors may from time to time make such rules as they think fit for the election, term of office, and all other matters as to members' representatives upon committees of the different special groups and as to the conduct of any postal ballot as aforesaid.

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## SECOND SCHEDULE

Section 29

### ENACTMENTS REPEALED

1908, No. 37—

The Dairy Industry Act, 1908: Part III. (Reprint of Statutes, Vol. I, pp. 90-93.)

1922, No. 41—

The Dairy Industry Amendment Act, 1922: Section 10. (Reprint of Statutes, Vol. I, p. 96.)

1926, No. 35—

The Dairy Industry Amendment Act, 1926: Section 8. (Reprint of Statutes, Vol. I, p. 100.)

1936, No. 58—

The Statutes Amendment Act, 1936: Section 22.