1949

NEW ZEALAND

Report of Committee

on

Co-operative Dairy Company Legislation

Presented to Both Houses of the General Assembly by Leave

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REPORT

The Hon. the MINISTER OF AGRICULTURE.

APPOINTMENT OF COMMITTEE

1. Arising out of discussions at the June, 1947, National Dairy Federation Conference, followed by similar discussions at the Dominion Dairy Conference in October of the same year, and as a result of approaches made to you by the New Zealand Dairy Board, Cabinet, on the 5th February, 1948, approved of the appointment of a Committee of four to investigate the problem of dry shareholding in co-operative dairy companies and to make recommendations for amendment of any existing legislation in that respect, the Committee to comprise two persons (to be nominated by the New Zealand Dairy Board) representing the dairy industry, one representing the Department of Agriculture, and the other representing the Stamp Duties Department.

The Committee was constituted as follows :—

Mr. H. A. Foy, Director, Dairy Division, Department of Agriculture—appointed by you to represent the Department of Agriculture and to be Chairman of the Committee.

Mr. C. H. Courtney, Secretary of the New Zealand Dairy Board—nominated by that Board to represent the dairy industry.

Mr. F. W. Groom, Office Solicitor to the New Zealand Co-operative Dairy Co., Ltd.—nominated by the New Zealand Dairy Board to represent the dairy industry.

Mr. E. C. Adams, District Land Registrar, Wellington—nominated by the Hon. the Minister of Stamp Duties to represent the Stamp Duties Department, which Department administers the Companies Act and Part III of the Dairy Industry Act.

(Mr. J. E. Marshall, Assistant Legal Clerk, Department of Agriculture, acted as Secretary of the Committee.)

2. When discussing the advisability of setting up such an inquiry you quickly realized that, although the problem had been submitted to Cabinet as being in relation to dry shareholding in co-operative dairy companies, no worth-while solution would be likely unless such companies were given some power to amend their Articles of Association so as to embrace all shareholders. It should also be noted that, even in the earliest discussions, particularly at the Dominion Dairy Conference, the necessity for modernization of Articles of Association of dairy companies had been stressed. You accordingly directed the Committee to investigate that aspect and, if thought advisable, to set out a model set of Articles of Association for co-operative dairy companies.

ORDER OF REFERENCE

3. The order of reference is therefore—

(*a*) To inquire into the desirability of amending existing legislation in relation to dry shareholding in dairy companies.

(*b*) To ascertain the adequacy of existing Articles of Association to provide for immediate and future developments of the industry and, if necessary, to prepare a model set of Articles of Association for the industry.

COMPANIES CONCERNED IN THE INVESTIGATION

4. There were 262 co-operative dairy companies engaged in butter, cheese, casein, dried-milk, and other dairy-produce manufacturing activities as at the date of this report, situated as follows :—

	Number.
North Auckland	16
South Auckland and Gisborne	32
Taranaki	63
Wellington and Hawkes Bay Provinces, Blenheim, and Nelson ..	75
Canterbury and West Coast	20
Otago	15
Southland	41
Total	262

PUBLICITY

5. The appointment and the purpose of the Committee were publicized by press statements released through the Press Association, articles in the *Journal of Agriculture* and the *New Zealand Dairy Exporter*, and by statements broadcast during the farmers' sessions over the National Broadcasting Stations. In these statements and articles submissions and suggestions were invited from all dairy companies as well as from any individual person interested.

THE OBTAINING OF STATISTICAL INFORMATION AND COMMENTS FROM INDIVIDUAL COMPANIES

6. As it was apparent that it would be necessary to ascertain the extent of the dry shares in the industry and that an early opportunity should be taken to obtain the preliminary individual views of all dairy companies on that problem and of difficulties resulting from their respective Articles of Association, a circular letter in the form set out in Appendix I was despatched by the Chairman of the New Zealand Dairy Board on the 15th March, 1948, to all dairy companies operating in New Zealand seeking principally a return of dry and wet shares of each company, a copy of its Articles of Association, and generally for such comments and suggestions upon the problems of dry shareholding and Articles of Association as those companies might think fit to make. It was stressed in that circular that all such information, comments, and suggestions would be treated in the strictest confidence.

The reason for the despatch of the circular by the Chairman of the Dairy Board was not only to identify that Board, as representing the whole of the dairy industry, with the inquiry, but with the desire to obtain the fullest information and the frankest of comment on the problems now before the Committee.

7. As a result of the above circular much information was received, together with worth-while suggestions and recommendations. The Committee decided to summarize the principal suggestions and recommendations and to submit them to all companies by circular letter so that the reaction of the industry might be obtained and that it might be informed in more detail of the problem involved in the investigation. Copy of that circular letter dated the 21st May, 1948, from the Chairman is set out in Appendix II. As a result of this circular additional information and suggestions were received.

PROCEDURE OF COMMITTEE

8. The Committee, having then formed an opinion upon certain major principles and suggestions for remedying the position, visited the main dairying centres set out below and discussed those suggested remedies with the interested parties. All companies in each particular area were invited by letter to attend a general meeting arranged either by the Committee or, where a Dairy Companies' Association existed, by the Association. After each such general meeting individual companies were also invited to meet the Committee in private for a discussion of their own particular problems, and many companies availed themselves of the opportunity. In this way every company in New Zealand was given an opportunity of being present at such a meeting and of meeting the Committee. Indicative of the interest taken in these matters, it can be said that over 200 of the 262 companies operating in New Zealand were represented at these meetings.

The centres visited were Whangarei, Palmerston North, Stratford, Hamilton, Gisborne, Carterton, Blenheim, Christchurch, Dunedin, and Invercargill.

HISTORICAL OUTLINE

9. The first co-operative dairy company to be formed in New Zealand is thought to be the Otago Peninsula Co-operative Cheese Factory Co., Ltd., which came into being in 1871. With the advent of refrigeration a large number of companies, both co-operative and proprietary, rapidly sprang up in various parts of New Zealand, and a surprising number of the companies in existence to-day date back fifty years or more.

10. As will be seen under the subsequent discussion on Articles of Association, many of the provisions in the constitution of those companies, although admirably suited to the then conditions, are now out of date and are having a definite restrictive effect on the efficient management of those companies. On the other hand, many of the principles laid down in those early days were particularly sound and it has been only carelessness in subsequent administration that has given rise to some of the present-day difficulties.

11. While it may have been the aim of those early companies to find the whole of necessary capital by the requirement that the supplying farmers should take up shares in proportion to the number of cows milked or to the number of pounds of butterfat supplied by them, this was not always possible, with the result that a part of the capital was subscribed by local townspeople and by the more financial or enthusiastic farmers accepting much greater share responsibilities than their supply required.

12. To give a return to those non-supplying subscribers and to adjust the position between members holding excess shares, it was usual to provide in the Articles of Association for either a compulsory or permissive dividend on shares, generally at the rate of 5 per cent. or 6 per cent. It must be conceded that without some such inducement many companies would not have come into being or, at the best, would have experienced serious financial embarrassment.

13. Again, as the cost of money in those days was mainly in the vicinity of 5 per cent. or 6 per cent., the payment of such a dividend did not involve the companies in any greater financial burden than would have been the case if those moneys had been borrowed from the banks, remembering that, as most of the produce was sold on consignment, there was a considerable lapse of time before the companies actually received in cash the full realizations, thus necessitating a greater dependence on capital or overdraft than is now the case.

14. On the other hand, quite a number of companies came into being without the requirement of a compulsory dividend, although in many cases there is a provision that some dividend shall be paid, generally with a restriction as to a maximum rate. Again, the Articles of some companies leave the question of a dividend at the option of the

directors or general meeting, while a few companies provide that the only return on the capital subscribed should be by way of a share bonus related to the actual supply of butterfat of each member in the particular financial year.

PROPRIETARY COMPANIES

15. Until about 1936 a number of proprietary companies operated in competition with co-operative dairy companies, but following upon the report of the Dairy Commission of 1934 and the enactment of the Dairy Factory Supply Regulations 1936 (administered by the Executive Commission of Agriculture) these companies went out of business, their supply being purchased by the neighbouring co-operative companies or by newly-formed co-operative companies, and it may now be said that the dairy industry of New Zealand is, in the main, in the hands of co-operative groups of farmers who are now supplying their particular company or, having previously supplied, still hold shares therein. No butter or cheese is manufactured by proprietary dairy companies in New Zealand to-day.

DRY SHAREHOLDING

16. For the sake of brevity the shares of those members who do not now supply milk, cream, or butterfat to their company are referred to in this report as " dry shares " and the shares of those members who do so supply are referred to as " wet shares."

17. While many of the earliest-formed companies had initially related their shareholding to the estimated butterfat-supply of the members, they soon found they were not able to keep it so because of the inability or refusal of all of the outgoing members to transfer their shares—the inability to transfer being probably due to a fall in supply to the company, through land going out of dairy production, or through loss of its supply to an opposition company—the refusal to transfer being probably because of the attachment of a favourable dividend to the shares.

18. To enable co-operative companies to meet this position and to confine their shareholding, as far as possible, to current suppliers, the Co-operative Dairy Companies Act, 1907 (now the Dairy Industry Act, 1908, sections 50 to 53), gave any co-operative dairy company the power to buy in or to resume the shares of its members so long as the number of shares so surrendered to the company and not reissued did not at any time exceed 20 per cent. of the total issued shares of the company, exclusive of surrendered and non-reissued shares. The price payable on such a surrender is a matter for the holder and his company. If the holder is not prepared to accept the figure offered by the company, he cannot be made to do so.

19. Section 54 of that Act, however, does enable a co-operative company to require a shareholder to accept the surrender of his shares at not less than their paid-up value, plus interest at 5 per cent. from the end of the previous financial year to the date of surrender, *should such a request be supported by a special resolution of the shareholders of the company.* In the course of its investigations the Committee did not learn of any instance where the provisions of this section 54 had ever been invoked.

20. It will thus be seen that no co-operative dairy company is able to buy back its shares at less than par if the holder is not agreeable to sell, nor can it under any circumstances accept the surrender of more than 20 per cent. of its issued capital except to the extent it resells shares surrendered to it to other holders.

21. Theoretically the applications of these provisions of the Dairy Industry Act, 1908, should have enabled any co-operative dairy company to have resumed its dry shares as these became dry and to have sold these shares to incoming suppliers, thus at all times keeping the number of shares surrendered but still not reissued to less than 20 per cent. of the total issued capital of the company, but the statistics set out below show a very different position.

22. DETAILS OF WET AND DRY CAPITAL OF 236 COMPANIES SUBMITTING RETURNS

Number of Wet Shareholders.	Nominal Capital of Wet Shareholders.	Paid-up Capital of Wet Shareholders.	Number of Dry Shareholders.	Nominal Capital of Dry Shareholders.	Paid-up Capital of Dry Shareholders.
37,030	£2,969,748	£2,743,926	25,637	£809,029	£666,354

PROPORTIONS OF DRY SHARES IN ABOVE COMPANIES

23.

	Number of Companies.
Proportion of dry shares not exceeding 10 per cent.	41
Exceeding 10 per cent. but not 20 per cent.	39
Exceeding 20 per cent. but not 30 per cent.	37
Exceeding 30 per cent. but not 40 per cent.	30
Exceeding 40 per cent. but not 50 per cent.	26
Exceeding 50 per cent. but not 60 per cent.	20
Exceeding 60 per cent. but not 70 per cent.	20
Exceeding 70 per cent. but not 80 per cent.	13
Over 80 per cent.	10
Total companies	236

From these statistics the following points emerge :—

(*a*) The control of approximately one-quarter of the dairy companies in New Zealand could be exercised by the dry shareholders, if they so wished.

(*b*) Approximately only one-third of the companies are in a position to resume all dry shares in view of the limitation of 20 per cent. imposed by section 52 of the Dairy Industry Act, 1908. Thus two-thirds of the companies require legislation to enable them to resume their dry shares.

(*c*) Approximately one-fifth of the capital in dairy companies in New Zealand is in the hands of dry shareholders.

PROBABLE REASONS FOR ACCUMULATION OF DRY SHARES

24. The reasons for this state of affairs may be found in one or more of the factors set out under the following subheadings :—

(*a*) Falling supply.
(*b*) Refusal of a company to resume shares of disloyal suppliers.
(*c*) Laxity on part of a company in pursuing a sound resumption policy.
(*d*) Financial inability of a company to resume shares.
(*e*) Shares to be resumed now exceeding 20 per cent. of the issued capital and thus no statutory power to resume shares in excess thereof.
(*f*) Refusal of dry shareholders to accept surrender.

(*a*) Falling Supply

25. If the supply to a company is maintained at a more or less stable figure, the number of shares to be held by the supplying members to that company will be more or less constant, unless, of course, the company embarks on further heavy capital expenditure. The outgoing supplier is replaced by the incoming supplier, who usually

is able to acquire the shares of the outgoing supplier by transfer. If the outgoing supplier receives direct from his company a resumption of his shares, then the company is able to sell the resumed shares to the incoming supplier. *If, however, the supply to the company falls, then there will be more shares than supply to support those shares.* This is particularly so where there are distinct farming changes in the district surrounding the particular company. If the territory of the company contains considerable areas of marginal land, then its supply tends to fluctuate rapidly according to the extent of competition from meat and wool. If the surrounding territory is being gradually absorbed into cities or towns not only does the land become lost to dairying, but much of the supply otherwise available to that company becomes attracted to town milk. A further factor may be competition for supply between competing companies where no zoning orders are in force.

26. A dairy company is able to maintain its position as an efficient manufacturing unit only so long as there is sufficient dairy-produce in the form of cream or milk available to it daily during the dairying season. As the daily quantity falls, so the cost per pound of butterfat for transport, manufacturing, and administration rises, with a consequent diminution in the net payout to the current suppliers. The position can be best illustrated by considering the common case of a once normally efficient cheese-factory situated near an expanding town. Its output may have been in the vicinity of 500 tons of cheese made from milk supplied by some forty farmers. To the extent that those farmers transfer their dairying activities to town milk or dispose of their holdings for closer settlement, so does the supply to that factory fall. The high cost of transport, particularly of replacing lorries, involving substantial capital commitments, deters any outlying farmers from joining the company. If there are other adjacent cheese-factories situated more favourably for supply and thus able to make a better payout to their members, then the fate of the first-mentioned concern is inevitable, although its existence may continue for many years as a very valuable service to the nearby town and to primary production. In the meantime, every resource will be strained to maintain the payout, at the expense of the maintenance of assets and long-term efficiency. That company may have twenty years ago, or even ten years ago, been quite prepared to resume the shares of its outgoing members at 20s. in the pound, although it more than likely did so at 10s. or 15s. in the pound, or arranged for the incoming supplier to take over the shares of the outgoing member.

To-day it is unable so to resume owing to the further strain this would involve on its payout, or to demand even reasonable share obligations from possible incoming suppliers for fear of losing that supply, which is more important to it from a cost-reducing point of view than even the share-money. That company cannot be expected to regard with any seriousness a moral obligation to resume the shares of those members who have left it to join, for instance, town milk, where there is a higher net return per cow than the remaining cheese members will receive by remaining in cheese, particularly as the withdrawal of those suppliers will again have decreased the net returns of the remaining suppliers.

(*b*) Refusal of Company to Resume Shares of Disloyal Suppliers

27. It is necessary here to refer briefly to zoning. Following upon the Dairy Commission report of 1934 and the coming into force of the zoning regulations, many dairy companies in the Dominion were given a virtual monopoly of the supply from a defined area surrounding their factories; in other districts competition between companies was, in the main, restricted to the extent of giving supplying farmers a choice of one of the two nearest companies. Prior to that time there was unrestricted competition, often with disastrous results upon the less fortunately situated company. Needless to say, companies would not do anything to facilitate the resumption of the shares of those members who had left them to join a neighbouring company, and while those

companies may have been pursuing a satisfactory policy of resuming the shares of their legitimately retiring members, the number of dry shares belonging to disloyal members has grown apace, frequently to be purchased privately by incoming suppliers and often at a very low figure. It will be unnecessary to emphasize that there must be some deterrent to disloyalty, and companies have found that a refusal to resume the shares of their disloyal members does tend to hold supply. In any case, if a member by merely transferring his supply to an opposition company could obtain a cash resumption of his shares, the temptation to do so would be great, especially in a time of financial embarrassment. Because of subsequent zoning, the disloyal shareholder may not now be able to come back to his former company. If he could, he would be deemed disloyal by his present company. It is a fact that many farmers to-day hold shares in several competing companies.

28. The companies thus engaged in competition have tended over the years to strain every resource to make a competitive payout. This has resulted in insufficient attention being paid to the maintenance of the capital position of the company, with the result that on any liquidation of the company the shares may not be worth par. *In fact, it could be said that many of the dry shareholders have received in these higher payouts some of the capital nominally represented by their shares.* No matter from what point of view this problem is approached, it is inescapable *that the only REAL asset a dairy company has is its day-to-day supply.* Its plant and equipment, particularly buildings (mostly concrete structures), situated as these mostly are some distance from centres of population, have little or no commercial value other than as a dairy unit.

(*c*) Laxity on Part of a Company in Pursuing a Sound Resumption Policy

29. Many companies have been lax in meeting their undoubted moral obligation to resume dry shares, particularly where there is no dividend payable. We think it must be conceded that where a supplier has loyally supported his company by supplying the whole of his milk or cream to that company during his period of active farming in the district, and has thus met through his supply his share of the maintenance and upkeep of the company's assets, perhaps even his share of substantial capital improvements, the company should refund to that farmer his proportion of the share capital, or at least his share of its estimated value. Too often companies, having got the use of share capital of their dry shareholders without cost, are reluctant to make any return thereon or to refund it, even at a discount. Quite a number of companies have, of course, set out to pay a small dividend so as to return to the dry shareholder what they considered the use of his money to be worth. *The correct solution is the prompt resumption of the shares upon a member ceasing to supply his company.* Very many companies did, however, attempt to lay down a resumption policy, and it can be said that, while a few companies have resumed the shares of their retiring members at par, this is unusual. Quite a common rate in some districts is 15s. in the pound, but in other districts, particularly the older districts where supply has not been on the increase, there is a wide divergence in resumption rates—some as low as 4s. in the pound, and many about 10s. in the pound. Because of this want of a sound resumption policy, shares have changed hands in the district at widely differing rates. Very many wet shareholders have not only acquired shares from their company (mostly by annual deductions from their butterfat cheques), when they, of course, met the full cost of 20s. in the pound, but have also bought shares from other members at varying rates, sometimes as low as even 2s. 6d. in the pound. It is probably because this has been done that companies have not felt disposed to grant substantial resumption rates. Partly because of this attitude the dry-share position in so many companies has now got out of hand. In some cases *there is imminent danger of the dry shareholders taking charge, but very little can be done about it under the present state of the law.*

(*d*) Financial Inability of a Company to Resume Shares

30. Probably because of the early competition between companies, the necessity for setting aside reasonable reserves for the purpose of meeting the cost of share resumption was not followed, and unless companies increased their overdrafts there were no funds out of which to meet the cost thereof.

(*e*) Shares to be Resumed Now Exceeding 20 Per Cent. of the Issued Capital, Thus No Statutory Power to Resume Shares in Excess Thereof

31. A glance at the statistics quoted in paragraph 23 hereof shows that of the 236 companies submitting that information no less than 156 of them have more than 20 per cent. of their capital dry. Even if those companies were given the means and had the will to resume their dry shares, they could not do so unless the present provisions of the Dairy Industry Act, 1908, were amended to permit of resumption beyond 20 per cent. of the issued capital.

(*f*) Refusal of Dry Shareholders to Accept Surrender

32. As has already been mentioned, quite a number of companies are or were compelled by their Articles of Association to pay a dividend, usually 5 per cent. or 6 per cent., on all share capital, wet and dry. As this return is free of tax it is a very profitable investment, and naturally the dry shareholders are loath to part with their shares unless at an attractive figure. The voting strength of those dry shareholders makes it impossible for a company so situated to carry the resolution required by section 54 of the Dairy Industry Act, 1908, to enable it to require surrender at par (plus 5 per cent. interest from its previous balance date to the date of surrender), even if that company were prepared to resume at that figure and otherwise came within the limitations imposed by that Act as to the number of shares which could be so resumed. We have found that where such a dividend has been in force for a number of years the number of dry shares in such a company has become excessive and certainly exceeds 20 per cent. of the issued capital, and in many cases exceeds 50 per cent. of that capital, thus giving the dry shareholders control, if they so desire, of the affairs of the company. The continued burden of that interest or dividend requirement upon the remaining wet shareholders has often resulted in a depressed payout, with the result that in order to keep that payout at all reasonable the maintenance and upkeep of the assets of the company have suffered. The shares, however, because of the compulsory dividend attached thereto, continue to have a market value of par, and in some cases in excess thereof, although on liquidation of such a company it would be very doubtful if those shares would realize anything like par. Many of those dry shares when a 5 per cent. or 6 per cent. dividend was not as attractive as it is to-day may have changed hands for much less than par. The company itself may have been resuming numbers of them at a figure of about 10s. or 15s. in the pound. Such a company would not now readily agree to find 20s. in the pound for dry shareholders, particularly when it knows that its assets do not justify that figure and that it has in the past given a much less rate to those members who have accepted resumption in accordance with the company's previous policy. The difficulties which beset companies so situated can be best illustrated by setting out the position of one of their number :—

This company in 1939 was required *out of butterfat* to find £2,735 to meet interest at 6 per cent. on its share capital held both by wet and dry shareholders. In 1947, although the supply of butterfat to the company that year was less than in 1939, the interest bill had gone to £2,956, apart altogether from an increase of £400 in the cost of taxation thereon, the aggregate result being that the wet suppliers, fewer in number compared with the 1939 figures, had to find an additional £650 per annum.

The further back the position is examined the more unfavourable the picture now becomes. The reason is obvious, for as current suppliers retire or dispose of their farms they hold on to their shares and the incoming supplier must be given new shares, thus resulting in a further increase in the interest and taxation bill. By reason of the cost per pound of butterfat to meet this sum (last year the cost was 0·284 of a penny), the company's payout does not now measure up to that of its competitors, and this tends to direct new supply to adjacent companies. In any case, a prospective supplier will not look favourably upon a company which must use part of his butterfat to pay interest on dry shares plus taxation thereon. This particular company has made many efforts to break the compulsory dividend, but without avail. Even if it were lawful to do so by a 75 per-cent. majority at a special meeting, there are now sufficient dry shareholders to prevent this being done. This company has no option but to continue the present unsatisfactory position or endeavour to bring about a liquidation, which can only have unsatisfactory repercussions in its district.

SUMMARY OF POSITION OF DRY SHARES

33. Mostly because of the reasons outlined above, there is no question that dairy-company shares have not a high standing in the business or farming community. When valued as an asset in an estate they are often shown at a nominal figure, and they pass from farmer to farmer at greatly varying prices, even in respect of the same company. They are seldom regarded as a worth-while investment unless there is a compulsory dividend attached thereto. In fact, it is not too strong to say that many supplying farmers regard the acquiring of dairy shares as a necessary evil in connection with their supply to a dairy company. The position is obviously deteriorating year by year, and unless something is done dry shareholders will soon be in excess of wet shareholders in the majority of co-operative dairy companies. In some companies the dry shareholders are now becoming active, and should they by their preponderance of voting strength take control of the company their policy cannot be in the interests of the wet shareholders, nor would such a state of affairs be conductive to true co-operation.

FUNCTIONS OF A CO-OPERATIVE DAIRY COMPANY

34. Before possible remedies for this state of affairs are discussed, the functions of a truly co-operative dairy company should be outlined. We are definitely of the opinion that the functions of such a company *should be the processing of the members' raw material (milk, cream, or butterfat) into saleable products and the return of the net proceeds of such operations to those members in proportion to their supply of the raw material.*

This conception of co-operative management is not new, as it is illustrated in some of our earliest companies. The constitutions of many companies, however, were framed for the purpose of making and returning profits to the shareholders as such, a set-up not now compatible with the generally accepted principles of co-operation.

The company is under an obligation to accept the milk or cream of its members. The members are under a moral obligation to forward their milk and cream to the company and to accept responsibility for their proper proportion of the capital requirements of the company. It will thus be seen that such a company, by the very nature of its activities, must be a service company and not a concern for the earning of dividends for the shareholders.

ALLOTMENT OF SHARES

35. It is also relevant to refer briefly to the method of allotting shares. The most general practice has been for companies to estimate the quantity of butterfat likely to be supplied by the farmer seeking membership and to allot him sufficient shares to cover such a supply. Either a call of so much per share was made or shares were called up in full and deductions were made from butterfat payments to meet the calls, or at the end of each financial year a dividend or a share bonus was declared and the proceeds thereof were then applied in and towards payment of the cost of the shares so allotted. In this way the supplying farmer did not actually make a direct cash payment to his company; he acquired the shares by deduction from his butterfat returns. As we have seen, theoretically every member is required to accept share responsibility in accordance with his maximum supply, but supply naturally fluctuates substantially from season to season and more often than not the supplier is holding more shares than he is required to do for that particular season. Some companies have actually refunded such surplus shares when satisfied that these suppliers were not likely again to supply up to their previous maximums. *It is well, therefore, to remember that, although the shares of farmers now supplying dairy companies are regarded as being wholly wet shares, in point of fact a substantial proportion of those shares are actually dry,* inasmuch as there is not sufficient butterfat being supplied by those members to justify the actual shareholding. Because it does not attempt to distinguish between the shares of supplying and non-supplying members, it was obviously the intention of the Legislature when it enacted the surrender or resumption provisions of the Dairy Industry Act, 1908, that co-operative dairy companies should be able to resume the shares of both the retiring farmers and the surplus shares of current supplying farmers. If it is agreed that the principal functions of a co-operative dairy company are to make that company a service organization for the supplying farmer, then it must surely follow that when this farmer legitimately ceases to require the services of that company he should receive a refund of his capital contributions. If by proper provisions for maintenance of the capital assets and by the continuation of sufficient milk or cream into the factory the company is enabled to continue to function as an economic unit, the monetary refund of the shares should undoubtedly be at par.

36. It seems to us that the ideal system would be to treat the actual supply from any farmer as being an irrevocable application by him for shares in the company to which he sends his produce, such shares to be issued in accordance with the rules and share standards of the company—that is to say, so-many shares for so-much butterfat, usually in the vicinity of one share for 100 lb. of butterfat. The company would then allow out of this butterfat income a credit of, say, $\frac{1}{4}$d. per pound butterfat supplied in each financial year and credit that sum towards payment for the shares so required. In this way the company would receive from each supplier in less than ten years full payment of share subscriptions. If it were necessary to get in share capital sooner, the deductions could be increased. When the supplying farmer ceased to supply, the company would then be in a position to refund to him such share capital either at par or at such discount as the shareholder and the company mutually agreed upon.

POSSIBLE REMEDIES

37. We now come to what appears to be the crux of the problem: What statutory rights, if any, should be given to such shareholders upon their cessation of supply to demand a return of their capital? *The Committee definitely recommends that some such right should be granted.* One of the reasons for this conclusion is that with the advent of zoning many dairy companies have been granted, or by inter dairy company agreements have obtained, virtual monopolies in their particular districts, and the Committee considers that there should be a very definite obligation upon every dairy company to

resume the shares of an ex-supplier. Furthermore, as pointed out in paragraph 32, there is an undoubted obligation upon any company to refund to its retiring loyal suppliers the deductions made from their butterfat payments as part of the capital requirements now no longer usable by them.

38. Because of the present chaotic state of most companies in regard to dry shares it is obvious that it would be impossible for the majority of companies forthwith to find the necessary finance so to resume dry shares, but the most serious aspect of all is, of course, that the shares of a large number of companies are to-day not worth their face value, and it would be manifestly unjust to require the present-day suppliers to find 20s. in the pound for past suppliers whose assets had for various reasons deteriorated over the years. Any attempt to force these present-day suppliers to accept such a burden would only drive them away from the company or into other forms of production.

39. There must be clearly some time lapse between the ceasing of supply and the right of that ex-supplier to demand resumption of his shares. It is thought that a period of five years should be sufficient. There would be thus no inducement for a current supplier to leave his company and transfer his supply to another company merely for the purpose of receiving cash for his shares. It would cover the position of that large class of supplier who swings between dry farming and dairy-farming, as it would enable both the supplier and his company to obtain some indication as to whether he is likely again to return to the fold as a supplier. .In other words, the period of five years should be sufficient for the status of the shareholder to be determined.

40. It is not suggested that the company *must* resume of its own initiative any dry share once it has been dry for five years. What is suggested is that the dry shareholder, *if he so wishes*, may demand and receive resumption from his company if there has been no supply from him for the past five years. He might well prefer to retain his shares beyond the five-year period to enable him to trade with his company or to use its other facilities (if any), or he might hope at some time in the future to supply again.

41. On the other hand, however, it is not suggested that a company should have to wait for five years before it can resume the dry shares of its members. As companies are bound to accept the milk or cream of their shareholders, it is only right that a company should be able, *if it so wishes*, to resume the shares of any members who have failed to supply it for a continuous period of, say, twelve months. If a company does not have this right it may be forced to refuse new supply for fear of the return of any dry shareholder with milk or cream beyond the manufacturing capacity of the company's plant.

42. As the law is at present no shareholder can be compelled to accept less than par for his shares, although in many cases those shares would not be worth that rate on a liquidation of the company. On the other hand, however, as a company, within the limitations imposed by section 54 of the Dairy Industry Act, 1908, has had the power for over forty years to require resumption at par, it can be said that the maximum value of shares should not exceed par.

43. If companies which have a compulsory dividend requirement should be given the opportunity to cease payment of dividends, *and we think they should be given that opportunity*, then what should be the obligations of those companies to their shareholders so deprived of a dividend ?

44. A workable solution of the dry shareholding problem has given the Committee a great deal of concern. From the outset it was only too clear that there were many aspects of the problem, varying not only between district and district but also between company and company. No matter what set formula was suggested, it was found that the necessary exceptions thereto made it impracticable and only emphasized the variable value of dairy company shares, and that no single rule could, in justice to all concerned, be applied in every case. In other words, each case must be decided on its merits.

The Committee, therefore, is of the opinion that the only practical solution of the problem is by the setting-up of an independent Tribunal with power to—

(*a*) Determine at what figure dry shares shall be resumed.
(*b*) What terms, if any, should be granted to a company in respect of its requirement to resume its dry shares.
(*c*) Approve of resumptions in excess of the present statutory limit of 20 per cent.

45. If such a Tribunal were set up it would need to take into consideration—

(*a*) The present-day worth of the shares, on the assumption that the company went into ordinary liquidation.
(*b*) The value of the shares, on the assumption that the company continued as a going concern.
(*c*) The market value, if any, of the shares.
(*d*) The rate (if any) which has been paid by the company in the past on any resumptions it may have voluntarily made.
(*e*) The future prospects of the company, with particular reference to the continuance in the normal course of a satisfactory quantum of butterfat.
(*f*) The ability of the company to meet the cost of resumption and its effect on the remaining suppliers.
(*g*) Whether the applicant for resumption has been a disloyal supplier, or whether the withdrawal of his supply was detrimental to the interests of the company.
(*h*) Any other matters whatsoever that the tribunal considers have a bearing on the fair value of the shares.

46. Such a Tribunal would then, if it thought fit, fix *a fair value or rate* at which the dry shares should be resumed. In no case should this value exceed par, because since 1907 companies have had the inherent right to resume at 20s. in the pound. Once any such order was made, the resumption value so fixed could be regarded as an ordinary unsecured debt immediately due and payable by the company, unless the Tribunal directed payment in instalments, in which case payment would fall due as directed without, we recommend, interest thereon.

47. In making any order for resumption of dry shares such a Tribunal would require to give very careful consideration to the ability of the company to find the moneys. Where a compulsory dividend is now payable, the annual cost of such dividend, including taxation, would go a long way towards redemption of that portion of the capital which is dry; in fact, in many cases it would liquidate the possible indebtedness in five to ten years, on the assumption that the resumption rate is fixed at 10s. to 20s. in the pound. It would also require to give the fullest consideration as to the position of and the effect on the creditors of the company if any order is made by it.

48. The financial position of some companies is such that neither time nor a reduction from par is required—only the right to redeem shares in excess of the present statutory limit of 20 per cent.

49. The reduction of the shareholders to mainly supplying shareholders would in the majority of cases increase interest in the company, lead to greater attention to its assets, and generally improve the morale of the company.

50. There may be cases where the failure of the company is imminent. It is thought that in such cases the Tribunal would not make any order for resumption, thus leaving the wet and dry shareholders to their ordinary legal rights upon liquidation.

51. There is at least one large company whose shares are related to individual groups within the company with an appropriation of assets to those shares for the purpose of resumption. In any such cases—and these will increase with greater

diversification in the industry—the Tribunal should be empowered to consider the question of resumption of any particular class of share within a company as if that class or group were a separate company in itself.

52. Although it is unlikely, it is just possible that in some cases dry shareholders may be signatories to Deeds of Guarantee given by them to the bankers of the company. In any such case it will be necessary to obtain a release from the banks of that obligation before the Tribunal is empowered to make any order.

53. It might be helpful to consider the possible findings of the Tribunal in respect of a typical company which has experienced the greatest of difficulty in functioning because of its dry-share problem with a compulsory dividend requirement.

This company has paid up capital of £7,000. Approximately £1,500 is at present held by supplying or wet shareholders. The balance of £5,500 is held by non-supplying or dry shareholders. A dividend of 5 per cent. is payable as a first charge on butterfat returns, involving £350 per annum, plus some further £90 for taxation thereon—a total annual charge of £440 on its small output, or 0·41d. per pound of butterfat. Although the supply to the company has been falling, its activities are likely to continue indefinitely, particularly if the burden of the above dividend could be avoided. The dry shares have changed hands not only between members of the company, but between investors, at varying prices, at one time at a low figure, but in recent years at almost par. Many of the previous suppliers have gone into sheep, but if that form of farming becomes less profitable they may return to dairying and expect the assets of the company to have been maintained ; meanwhile they receive a 5 per cent. dividend free of tax. The shares of the company are unlikely on any liquidation to be worth 20s. in the pound—more likely 10s.

The Tribunal may in such a case fix the resumption of the shares at 10s., which would involve the company in finding £2,750. This it obviously could not do immediately ; but, as we have seen, the present annual cost for interest and taxation thereon is £440. If the sum of £2,750 were payable over five years the annual commitment would be £550, or only £110 more than the present cost for interest and taxation. The assets of the company would then be subject to only 1,500 shares, instead of 7,000. Should the company subsequently go into liquidation, these remaining shareholders may perhaps recover even more than they paid out for such resumptions, but it is only right that they should, as they are taking the risk and in the meantime are keeping in existence a valuable service organization for the district.

It is worthy of note, however, that liquidation of dairy companies, except in districts where supply is falling, is uncommon, as the district farmers must have some outlet for their milk or cream even if the prices are unsatisfactory.

54. A typical case of a company in a similar position as to dry shares but with no dividend liability presents a more difficult problem. In such a case any moneys to be found for resumption would immediately become a new burden on the company and its payout. In such a case it may be found that a fair resumption value is not anything like even 10s. in the pound. Many of the shares may have been dry for a generation or more and will have been regarded by the holders as having little or no value. It is conceivable that a fair value may be only a nominal sum well worth the while of the remaining shareholders to find and yet some return to the dry shareholders, who under the present system do not appear ever likely to receive anything.

55. There will, of course, be many companies most desirous of finding even par for their dry shares and only requiring permission to resume more shares than the present statutory limit of 20 per cent. Other companies—and we think this will apply to the majority of the sound dairy co-operatives—will be happy to be permitted to resume their shares at about 15s. in the pound, a figure which has been accepted by the

majority of their outgoing suppliers for many years; in fact, it is not too much to say that many shares have been acquired in the industry in the knowledge and on the expectation that a reasonable discount would be imposed on their ultimate resumption.

56. After the present chaotic position has been settled it is unlikely that the Tribunal would be called upon very often to adjudicate between the dry shareholder and his company. The principles would then be well known and any fair approach to the matter by the then parties should result in prompt and amicable settlement. In any case, there is no reason why any company cannot, as at present, agree with any of its shareholders to resume at any rate mutually agreed upon or to pay out a higher rate than fixed by the Tribunal if the wet shareholders agree.

57. The composition of such a Tribunal is, we think, very important. We consider that it should be comprised of, say, three persons who should have a definite knowledge of the industry. It would inspire confidence on the part of the company concerned if one of the members were nominated by the Dairy Board, and we are of the opinion that the Minister of Agriculture should nominate another person, and, as it will be at all times necessary to protect creditors, the third person could be nominated by the Minister of Stamp Duties, the Department which administers the present Part III of the Dairy Industry Act, 1908, and the Companies Act, 1933.

It should be emphasized that dairy-company representatives have indicated a strong preference for such a set-up, rather than that these matters should be determined by Court procedure and litigation.

It has been mentioned to the Committee by several companies that they consider that any moneys set aside from butterfat proceeds for the purpose of resuming dry shares should be exempt from taxation, but as this matter is outside the order of reference of the Committee we do not feel that we should make any recommendation in this respect.

SURPLUS SHARES

58. Many current suppliers of companies are holding more shares than they now require to relate their shareholding to their present supply. These now unrequired shares are known as "surplus" or "excess" shares. Many companies have urged that these surplus shares should be treated as if they were dry shares. If they were so defined and treated, then the holders would be entitled to resumption in five years, if the Committee's recommendations become effective. The Committee feels, however, that there are too many administrative difficulties to permit of a solution of this problem being laid down. It has been emphasized that the statistics of dry shares quoted in paragraph 22 refer only to the shares of persons not now supplying the company in which the shares are held. We have no statistics as to the number of surplus shares of members of dairy companies. In some cases, we do know, the proportion is quite substantial. As these surplus shares have come into being in many different ways, and as there is no certainty as to the proportion which will continue to be surplus, we think it can safely be left to the companies themselves to discharge their true obligations in this respect; and if a solution of the present vexed dry-share problem is found, companies will have the incentive to keep their shares related, as far as is practicable, to their actual supply. We think that it should be made clear that companies have the right *at any time* to resume such surplus shares, a right now contained in section 50 of the Dairy Industry Act, 1908.

UNTRACEABLE SHAREHOLDERS

59. As we have previously mentioned, many shares have been dry for a generation or more. As will be seen from the statistics quoted in paragraph 22, there are many holders; thus the individual sums are often small. Present whereabouts of many of those shareholders are unknown. Many will be deceased or have left the country. The Committee found that in some cases the Christian names and occasionally even the

initials were in doubt. It is therefore recommended that statutory authority be given to co-operative dairy companies to forfeit such shares for the benefit of the company should the shareholders continue to be untraceable after approved steps have been taken to locate them. There is already precedent for this recommendation in the case of mining companies and Table A of the Companies Act, 1933.

This now brings us to the second phase of our report :—

ARTICLES OF ASSOCIATION

60. The Articles are the internal regulations of a company and generally may be varied or added to by special resolution—that is to say, by the authority of not less than three-fourths of the valid votes cast at any meeting of which proper notice specifying the intention to propose that resolution has been given.

61. Articles of co-operative dairy companies, in addition to providing for the internal management of the company, frequently set out in part or full the contractual relationship of the shareholder with the company in respect of his supply of milk or cream. There are thus as between such companies and their shareholding suppliers two distinct relationships :—

(1) The general relationship between the company and its shareholders as such.
(2) The contractual relationship between the company and each individual supplier in respect of his supply.

Where an Article creates a contractual relationship, unless every member voluntarily consents to a variation thereto, a valid alteration to that Article becomes impossible.

62. There have been many decisions of the Court of Appeal, the Full Court, and the Supreme Court emphasizing these two distinct relationships, and we can do no better than quote from a summary appearing in that excellent work, " The New Zealand Dairy Industry," by Geo. A. Duncan, published in 1933 :—

(1) Articles of Association which are not regulations but are in the nature of contractual obligations cannot be altered to bind shareholders who have not definitely agreed to the alteration. Any alteration binds only those shareholders who agree to it, either specificially or by conduct or by acquiescence, and those new shareholders who join the company after the alteration.

(2) A shareholder coming into a company on a certain share basis, and agreeing to supply upon certain conditions as provided in Articles of Association, can hold the company to those conditions and arrangements. The contract entered into cannot be altered by amendment to Articles of Association unless with his consent, which in certain cases may be given by acquiescence.

(3) Articles which are in the nature of regulations and over which the company has legislative authority may be amended by special resolution as provided in the Companies Act, 1908, and all shareholders are bound by such amendments.

The legal decisions referred to, and the summary of the legal position which has been given, reveal the difficulty which Co-operative Dairy Companies meet when alterations of Articles of Association of a contractual nature are attempted. Co-operative Dairy Companies have been recommended to have completed with the suppliers forms of contract covering the terms and conditions of the supply, but practical difficulties are met in any endeavour to secure these contracts, and many suppliers refuse to sign. Such contracts are unsatisfactory unless all the suppliers are parties to them. Furthermore, after the contracts have been completed the circumstances and requirements of the company may make necessary an alteration of the terms and conditions of supply, in which case new individual contracts would have to be completed.

The suggestion has been made that Co-operative Dairy Companies are justified in asking for special legislation which would meet their peculiar requirements in regard to the provision of capital and of adequate milk or cream supply. This legislation, it is considered, should enable Co-operative Dairy Companies to alter the terms of Articles of Association, upon the passing of a special resolution, notwithstanding that such Articles are of a contractual nature. It is further suggested in this regard that the rights and interests of any dissenting minority of the supplier-shareholders could be safeguarded by a provision requiring the sanction of the Supreme Court to the alteration. The Court would have to be satisfied that the proposed alterations were in the interests of the Company as a whole and not for the benefit of a particular section of the shareholders.

63. We have already mentioned that dry shares are on the increase in the industry and it is this increase which has mainly focused attention on the Articles. A Supreme Court decision, *Geary* v. *Melrose Co-op. Dairy Co., Ltd. (1930)*, has made it clear that any alteration to the Articles purporting to reduce or abolish a compulsory dividend can, on the action of any non-assenting shareholder, be declared to be null and void. Thus, even if a company is able to obtain the requisite three-fourths majority of those present at a properly convened meeting, it is no further ahead towards an amendment in its constitution, however desirable that amendment might be, should it deprive any non-assenting shareholder of his contractual right.

64. Cases have come to the knowledge of the Committee where some companies did obtain special resolutions purporting to reduce or wipe out such a compulsory dividend and that those companies have proceeded thereafter as if such resolutions were binding upon the non-assenting shareholders. It seems to be clear that any action by those shareholders not actively approving might result in those companies having to find sometime in the future large sums for dividends wrongfully not paid in the past.

65. It is safe to say that actions by very many dairy companies over the past years have often been at variance with the requirements of their Articles of Association, but as many of the dry shareholders have taken little interest in the affairs of the company, and as what has been done has in the main met with the approval of the active suppliers, the companies' actions, so *ultra vires*, have not yet been noticed.

66. Another result of the growing number of dry shares is the alteration it has effected or can bring about in the voting trends in companies. At the present by far the largest number of the companies provide that all shareholders may vote, generally on the basis of one vote for so-many shares, with an additional vote for every additional block of shares up to a maximum of five or ten votes. *A few companies do limit voting only to their wet shareholders.*

67. Wet shareholders are predominantly concerned with the final payout for butterfat by the company; the dry shareholders in the best possible return on their capital. If our statement of the functions of a truly co-operative dairy company is sound (and it did have the unanimous support of the delegates of all companies attending our meetings), then it follows that the control of such a company should be solely in the hands of the members supplying the produce thereto, a principle also supported unanimously by the delegates.

68. *We therefore suggest that voting within a co-operative dairy company should be confined solely to the supplying members*, and if our recommendations for the elimination of dry shares are given effect to no injustice will be done.

The immediate effect of such a voting restriction will, we think, be the elimination of the compulsory dividend where one is compulsory, but, as we again repeat, if provision is made for the buying-out of the dry shareholders, no injustice will be done.

69. What should be the relationship of wet shareholders *as between themselves?* Should a dissenting minority be bound by the decision of the majority, even if it does affect the contractual rights of that minority? In other words, should power be given to a three-fourths majority of the votes cast at a properly constituted meeting to alter the Articles of Association of a company so as to bind *all* members, irrespective of the contractual aspect of the Articles so altered?

70. Before we look at that problem, let us review the present position. Articles of companies vary greatly in their provisions, particularly as to the earlier-formed companies. Many of them are functioning under Table A of the Companies Act, 1908, or even of the 1882 Act that table being designed for companies whose aims should be principally

the safeguarding of the share capital, the making of a reasonable profit, and its disbursement upon a *share* basis. The Committee has noted that many present Articles of companies are unenforceable or perhaps void, as they are in conflict with recognized legal principles.

71. Because of those out-of-date Rules or Articles now totally at variance with the aim of the present suppliers, some companies of late have gone into liquidation, re-forming with new Articles.

72. As we have said already, it is most undesirable that liquidation (apart altogether from the cost factor) should be resorted to for the purposes of overcoming what is fast becoming a general problem, particularly if it is agreed that dairy co-operatives should be but service organizations for their districts, in which so many of them have been given absolute monopolies of the supply. It may not always be possible to obtain the necessary resolutions to permit a company so to go into liquidations. In any case, a company having in effect gone to the trouble of liquidating and re-forming might well next day find itself up against another legal difficulty in its Articles requiring a similar remedy for its removal.

73. That Articles are often out of date is best illustrated in the present uneasy position as to the supply of town milk. The gradual inroads of this form of supply, particularly into the cheese milk of quite a number of factories, have encouraged companies to endeavour to form town-milk pools within their own organizations. The constitution of most companies, however, provides that the company shall be a single unit or straight-out organization paying *all* of its members the same rate per pound of butterfat, and thus the necessary differential margin or price for any particular produce is *ultra vires* of the company. It is true that this difficulty might be overcome by individual contracts, as mentioned by Mr. Justice Salmond in the *Shalfoon* case, but, as Mr. Geo. Duncan comments in his work previously quoted, such contracts are unsatisfactory unless all parties sign. The most serious objection, however, is that when any alteration is required new individual contracts again become necessary, and it is the experience of companies that there are always a few who refuse to sign, particularly trustees of supplying estates, notwithstanding that such a variation is overwhelmingly for the good of the company. Another very serious objection is the delay, often fatal, which can occur before such consents are obtained. This aspect was best illustrated in rapid changes in types of manufacture required during the past war, when many necessary things were done by dairy companies outside and even in contradiction of powers contained in their Articles. Any attempt to have regularized those actions or to have varied them would have been frustrated by the few who proved difficult enough during that time of emergency, even if there had been time to have attempted the legal formalities required to bring the action of those companies within their constitution.

74. Apart altogether from possible developments in town milk as part of the set-up of a dairy company, there has been a tendency of late, particularly in purely butter-manufacturing companies, to engage in whole-milk activities such as dried milk or casein. The *modus operandi* is to form a pool or group of suppliers adjacent to the present butter-factory and to pay them a premium for the added cost of such a form of supply but rarely do existing Articles permit this to be done. One company in particular asked all its nearby suppliers to change from cream-supply to whole-milk supply, spent considerable sums on new buildings and plant for the benefit of those nearby suppliers, and promised them the usual whole-milk premium for such supply (a premium generally sufficient only to cover the loss of by-product, cost of changeover, and cost of cartage of whole milk as against the much lower cost of cream). This company now finds that it is in serious legal difficulties with its other suppliers and must regularize its position, but fears (with good reason) that it will be impossible to do so by individual contracts. Again, another company, wishing to do justice to all of its suppliers of one type of

produce, proceeded to obtain a written form of consent as to an equitable basis for dealing with the proceeds of that produce; several hundred suppliers signed that form, leaving only one outstanding signatory, who can and might take action at any time and so frustrate the wishes of the whole of his fellow-suppliers.

75. The dairy industry has always been on the alert for new products to manufacture from milk, cream, or butterfat. With every advance or change comes the need for new rules for the companies so engaged. *What, therefore, might be an excellent Article to-day may be restrictive and unjust in the extreme to-morrow.*

76. The position as we see it is that the need for a method of *easily and equitably* altering the Articles to meet the changing needs of co-operative groups of dairy-farmers is just as imperative as the need to bring up to date the now obsolete Articles of the majority of our dairy companies.

77. There is, we think, a satisfactory means of achieving both these ends. It is by providing that in the case of co-operative dairy companies *the majority decision of the supplying members shall bind all members of the company,* even if that decision should override contractual relationships created or evidenced by the Articles. The Committee, however, does not for one moment recommend that any individual *written* contract not contained in the Articles between a company and its members should be overridden at the behest of the majority.

78. We recognize that there must be some limitation upon companies as to the extent they can increase the share liability of any dissenting member, but to say that a company cannot increase its share standard at all at the instance of the majority is to place a brake on the efficiency, let alone the expansion, of the company. (As will be seen later, we suggest that the share standard may be increased by a three-fourths majority decision, provided that such increase shall not incur any dissenting member in a greater liability for share capital than his original responsibility, *plus 25 per cent. thereof.*) Some companies have urged that all supplying members should be required to fall in with the wishes of the majority, whatever the result, and stress the need at times for greatly increased shareholding in the event of rebuilding programmes, particularly following destruction of factories by fire; but we think that persons joining co-operative dairy companies should know the ultimate extent to which they can be made to take up shares by a majority decision. In other words, they are entitled to know the extent of their financial obligations. On the other hand, limitations now imposed by section 35 of the Companies Act, 1933, are, for the reasons we have mentioned, too restrictive to permit of the true functioning of a co-operative industry.

79. We have set out in Appendix III a model set of Articles containing, we think, all the existing powers now enjoyed by most companies and, in addition, many necessary additional powers which few companies, if any, now have.

80. If authority is given to the present wet shareholders of every company by a three-fourths majority vote to adopt those model Articles in lieu of its own Articles, *to be binding upon all shareholders,* then every such company taking advantage of that authority will have its *Rules, Regulations, and Articles* as up to date as possible.

81. If the suggestion contained in paragraph 77 is given statutory effect, then any of those companies may at any later date alter, as it thinks best, the provisions of that model set similarly by a three-fourths majority decision, and so on, thus permitting in the future elasticity in the management of dairy co-operatives while retaining to each its individuality so desirable in primary enterprises.

82. The model set is made up of those Articles which have in the main stood the test of time as to their practicability and fairness. There is, however, one departure from the practice of many of the older companies. It is in connection with the basis

of shareholding. In this case the Articles have been framed to enable shareholding in a company to be based *solely* on the supply of butterfat. Many of the existing Articles require a minimum number of shares to be held, even if the supply from that member may never reach the quantity normally required to warrant the holding of those minimum shares. Again, a few companies fix a maximum shareholding, even if the supply from a member may warrant a very much greater holding.

We say emphatically that every member's shareholding in a company should be related to his actual maximum supply. If, therefore, he is required to hold one share for, say, every 100 lb. of butterfat, then if he supplies 12,000 lb. of butterfat he shall hold 120 shares; if his butterfat a few seasons later increases, then he should be required to hold the additional shares.

83. To enable companies to get in more share capital, provision is made in the model Articles for an increase in the share standard up to 25 per cent. of the basic figure as set out in the original Articles. Any further increase must be with the consent of the individual members.

84. We have so drawn the model Articles that the butterfat income must be distributed only on a butterfat basis and not as to any part as a *dividend* on shares.

To give companies, however, partly a simple means of collecting their members' share dues and partly an equalization of the position between shareholders and suppliers who are not shareholders, there is provision for a share bonus, a system which has been found to work excellently wherever tried. Such a share bonus is available only on the pounds of butterfat supplied *and covered by shares* and does not in any way result in a return on shares which are not covered by butterfat in the particular financial year of the company. In other words, there is no financial return on surplus shares—only on those shares actually related to the butterfat of the particular year.

85. One of the problems in the industry is the very small, and what might be termed the itinerant, supplier. He supplies a small quantity of fat at a time when the manufacturing facilities are used almost to their maximum, and in the beginning and towards the end of season, when every pound of supply is needed, he ceases to supply. The cost of handling, testing, and administration of his supply is out of proportion when compared with even the smaller genuine dairy-farmers. Many schemes are in being to adjust this tax on the genuine supplier, but as conditions and practices from district to district vary so widely, we have suggested that the Articles of a company should merely contain power to make such adjustments if any, in this respect as the company shall think fit in order to return to each member his true proportion of the net returns of the company.

86. We have included power to conduct separate groups of suppliers within a company such as dried milk, casein, evaporated milk, cheese, town milk, and the like, either as virtually separate entities with their own payouts, or upon a premium basis for particular types of produce, or in such manner as the company shall deem equitable, and with power to amalgamate or vary these groups as changing circumstances might dictate.

87. Broadly speaking, if such a set of Articles is adopted, every *bona fide* supplier of milk, cream, or butterfat to a company will be a member thereof to the extent of his supply; he will be entitled to his proportionate voice in its management and treatment as a supplier on sound co-operative lines, and when he retires, if the first part of this report is made effective, to a refund or resumption of his share capital within a reasonable time and on a fair basis.

88. Any company which adopts these Articles and has for its principal objects the manufacture of dairy-produce should automatically be entitled to registration under Part III of the Dairy Industry Act, 1908, inasmuch as it thus becomes a co-operative dairy company in the fullest form.

89. The present definition of a co-operative dairy company set out in section 48 of that Act is—

A company which is incorporated under the Companies Act, 1908 (whether before or after the coming into operation of this Act), and the principal object of which is the manufacture of butter, cheese, dried milk, casein, or other article from milk or cream 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.

The weakness of this definition is that there is no restriction on the proportion of milk actually received which shall be from shareholders. There could be several hundred suppliers to such a company of whom only a handful may be shareholders. Again, not all the shareholders may be holding shares in proportion to their supply, as large suppliers may and do have only a few shares, while small suppliers may hold many shares.

90. It has been suggested that the above definition be amended to require that of its supply no less than 60 per cent. shall be from its shareholders, but we think this would result in too many administrative difficulties. That there will be always odd supplies from intermittent sources and from persons having religious objections to the taking of shares is obvious from past and present-day experiences. The proportion thereof should, however, be small in relation to the whole.

91. The simplest definition may be found in the requirement that before a company may be registered under Part III of the Act it shall have Articles in the form or to the like effect of the Articles which we have suggested should be set out in a Schedule to the Act and that all existing companies be given a reasonable time in which to adopt those Articles if they wish to take advantage of the special statutory benefits appertaining to registered co-operative dairy companies.

92. Should any company desire to change its existing Articles in favour of the model set, it could do so as we suggested by a special resolution made by a three-fourths majority of its wet shareholders, *retaining, however, its present share standards* if these are related to butterfat. If in any case the share standard is not so related, then the share standard in the replacing Articles could be set out on such a basis as not to increase the share responsibility of the individual members beyond their previous responsibilities, unless, of course, all members concur.

93. It thus becomes necessary to define what is a wet shareholder. Our definition is—

A "wet shareholder" or "*bona fide* member" of a co-operative dairy company means any shareholder of such a company—

(*a*) Who, after making provision for his own domestic requirements, if any, and excepting so far as he may be relieved from supplying by consent of his company, supplies for the time being to that company the whole of the milk, cream, or butterfat obtained from cows owned by him or subject to his control and depasturing on land conveniently served by that company and from which that company is permitted and is willing to accept supply.

(*b*) Who so supplies that company continuously from the time he so commenced to supply during the particular financial year of that company down to the time in that particular year in which it becomes necessary to define his status as a supplier of that company: Provided, however, if he is not actually supplying at that time by reason of the said cows not being in profit, but will in the opinion of the directors of the company recommence to supply as above as soon as the said cows again come into profit in the ordinary course of dairy-farming, he shall be deemed to be supplying continuously.

(*c*) Who while so supplying shall have performed all his obligations in respect of shareholding which that company may have required of him to the time it becomes necessary to define his status as a supplier of that company.

But no shareholder who has not supplied at any time during the previous eight months to the time it becomes necessary to define his status as a supplier of that company shall be deemed to be a wet shareholder or a *bona fide* member.

94. It is recommended that the Dairy Industry Act, 1908, be amended to provide that only wet shareholders or *bona fide* members as defined above shall be entitled to vote in any co-operative dairy company and that their three-fourths-majority decisions may accordingly bind all members, thus giving practical effect to the provisions of sections 23 and 125 of the Companies Act, 1933.

95. The voting basis, as we have mentioned, varies from company to company, but generally is in the pattern of one vote up to say five shares, two votes up to twenty shares, three votes up to forty shares, four votes up to seventy-five shares, and five votes thereafter.

Some companies give the same number of votes as shares held, and if shares are related to butterfat, such a form of voting would reflect the butterfat interest of the member. However, from a practical point of view it is best to leave individual companies to carry forward their existing method of voting.

96. Section 6 of the Land and Income Tax Amendment Act, 1935, provides that the following income shall be exempt from taxation :—

(*ee*) The income of any co-operative company incorporated in New Zealand, to the extent hereinafter provided, namely :—

(i) In the case of any such company having for its objects or one of its objects the manufacture of cheese, casein, dried milk, or butter, from milk or cream supplied to the company by its shareholders in so far only as its income is derived from the treatment, manufacture, and sale of products of milk, and if and so far only as the rules of the company provide that its income shall be distributed solely amongst the suppliers of milk in proportion to the quantity of milk or butterfat supplied by them :

(ii) In the case of any such company having for its objects or one of its objects the sale of milk supplied to the company by its shareholders if and so far only and the rules of the company provide that its income shall be distributed solely amongst the suppliers of milk in proportion to the quantity of milk supplied by them.

It will thus be seen that the Articles of a company, in order to comply with those provisions, must direct that the whole of the net proceeds of butterfat should be distributable by companies on a butterfat basis. In our opinion, no existing set of Articles does comply with that section, but the model set will, in effect, do so. It might be thought desirable that section 6 should be amended to give exemption to companies having Rules in accordance with the proposed model set, thus giving uniformity to the taxation aspect of co-operative dairy companies in so far as their income is derived from dairy-produce manufacture.

MEMORANDA OF ASSOCIATION

97. Many Memoranda of Association contain provisions now generally set out in the Articles. We refer particularly to the control of shares. In order that companies might avoid the expense of Supreme Court applications for variation of their Memoranda of Association, it should be sufficient to provide in an Act that where there is any conflict between the Articles contained in the model set and the existing Memorandum of Association the Articles shall prevail.

DAIRY COMPANIES NOT REGISTERED UNDER PART III OF THE DAIRY INDUSTRY ACT, 1908

98. There are a few companies which have not bothered or may have been unable to register under Part III of the Dairy Industry Act, 1908, and until these companies do so register, then they are unable to take advantage of the existing provisions for surrender of shares or of any amendment thereof which might result from this report. Unless the Articles provide for such registration (the Articles of the earlier companies do not), the application must be supported by a special resolution of the company.

Such a resolution may not be forthcoming should any preponderance of dry shareholders oppose such a resolution. It may be therefore in the interests of the wet shareholders of those companies if the Legislature provided some machinery to enable them to obtain the advantages of co-operation. We have not sufficient data to make any precise recommendations hereon. No doubt some means could be devised of authorizing some responsible body to conduct a ballot among the wet shareholders of any of those concerns if there should be a petition from any wet shareholders asking for such action; and if such a ballot is in favour of registration as a co-operative company under Part III of the Act, and if the objects comply with the requirements of that Act, registration could be effected accordingly.

RECOMMENDATIONS

99. Our recommendations are therefore as to :—

(*a*) Dry Shares

That the Dairy Industry Act, 1908, be amended to provide—

(1) That the holder of shares in a co-operative dairy company may demand resumption thereof, provided he has not supplied that company for a period of not less than five years prior to such demand.

(2) That a co-operative dairy company may demand the surrender of any of the shares of any of its members who have failed to supply the company with milk, cream, or butterfat for a continuous period of twelve months prior to such demand for surrender.

(3) That a co-operative dairy company may demand the surrender of any of the surplus shares of any member, such surplus shares being those shares not used by that member in respect of his maximum supply in any of the five years immediately prior to such demand.

(4) For the setting-up of a Tribunal of three persons, one to be nominated by the New Zealand Dairy Board, one by the Minister of Agriculture, and one by the Minister of Stamp Duties as being in charge of Part III of the Dairy Industry Act, 1908, for the purpose of—

(*a*) Authorizing co-operative dairy companies, if they think fit, to resume the shares of their members in excess of the limitations imposed by the present provision of the Act.

(*b*) Fixing a fair or just resumption value (not exceeding par) to be paid by any company on any resumption or surrender of shares in the event of the holder and company being unable to agree upon such value.

(*c*) Fixing the terms of payment by a co-operative dairy company of any amount it is required to find on any such surrender or resumption as above, provided that no payment shall be extended beyond ten years from date of application.

(5) For the purpose of arriving at a fair or just value of dairy shares the subject-matter of any such surrender or resumption, the above Tribunal shall take into consideration—

(*a*) The present-day worth of the shares, on the assumption that the company goes into ordinary liquidation.

(*b*) The value of the shares, on the assumption that the company continues as a going concern.

(*c*) The market value, if any, of the shares.

(*d*) The rates, if any, which have been paid by the company in the past on any resumptions it may have voluntarily made.

(*e*) The future prospects of the company, with particular reference to the continuance in the normal course of a satisfactory quantum of butterfat.

(*f*) The ability of the company to meet the cost of resumption and its effect on the remaining suppliers.

(*g*) Whether the applicant for resumption has been a disloyal supplier or whether the withdrawal of his supply was detrimental to the interests of the company.

(*h*) Any other matters whatsoever that the Tribunal considers have a bearing on the fair value of the shares.

(*i*) Whether, owing to the imminence of the failure of the company, any order should be made.

(6) Upon any order by such Tribunal as to resumption or surrender as above, the sums fixed by the Tribunal to be paid by the dairy company to the holders of the shares the subject-matter of the application to be deemed to be unsecured debts due by that company to those holders and to be immediately payable unless the Tribunal otherwise directs—the company's share register to be thereupon amended accordingly.

(7) Where any co-operative dairy company has issued shares to separate groups or sections of its suppliers, resumption or surrender of any shares issued in respect of any such group or section may, if the Tribunal thinks fit, be determined in all respects as if such group or section were a separate and distinct co-operative dairy company.

(8) That the present provisions of the Act as to surrender or resumption of shares be retained so as to permit companies to continue the present system within the limitations therein set out.

(9) That, in order that the creditors of companies might be protected, all rights to demand surrender or resumption of shares within the provisions above set out shall be contingent upon the approval of the Tribunal to surrenders or resumptions in excess of the 20-per-cent. limitation at present imposed by the Act. The company to make immediate application for such consent, following upon an otherwise lawful demand by a shareholder for resumption. Upon failure by a company to take such action within two months of such a demand, the holder of the shares may make application direct to the Tribunal.

(*b*) Articles of Association

That the Dairy Industry Act, 1908, be amended to provide—

(1) For the inclusion in a Schedule thereto of a table of Articles of Association in the form set out in Appendix III hereof.

(2) That the only members of a co-operative dairy company who shall be entitled to vote at any meeting upon any show of hands or poll or ballot of the co-operative dairy company shall be the *bona fide* members thereof as defined in paragraph 93 hereof.

(3) That the Articles of Association of any co-operative dairy company may be altered or added to by special resolution—that is to say, by a three-fourths vote of that company. Any such alteration or addition is to be as valid as if originally contained in the Articles and to be binding upon all members of the company, notwithstanding that there may be created or evidenced by the Articles so altered or added to a contractual obligation as between that company and any of its members. Nothing herein, however, shall require any member of that company to underwrite at any time a greater share responsibility in respect of a similar supply of milk, cream, or butterfat to the company than his existing obligation—*i.e.*, the share standard when he joined the company—plus a 25-per-cent. increase thereon, and nothing herein shall vary any express contract (not created or evidenced by the Articles) entered into between a company and any of its shareholders.

(4) That a co-operative dairy company shall be a company having firstly as its principal objects those now set out in section 48, and secondly having adopted Articles of Association in the form set out in the Schedule to the Act or to the like effect, subject to any subsequent variation therein authorized by the supplying members of that company.

(5) That if there should be any conflict as between the provisions of these Articles and any existing Memorandum of Association, the Articles in the form set out in Appendix III shall prevail.

(6) That no company failing to so comply with this altered definition within, say, two years of the passing of this amendment shall be entitled to be regarded as being registered under Part III of the Act.

(*c*) Untraceable Shareholders

(1) That after due notice has been given companies be empowered to forfeit the share of untraceable shareholders for the benefit of the company.

CONCLUSION

100. We have endeavoured in this report to adhere to the principal phases of the matters before the Committee, and there may be therefore many matters submitted by dairy companies of which no mention is made in the report, but we wish to assure all dairy companies that every suggestion made has come under careful consideration.

The Committee was particularly struck with the keen appreciation of the problems before the industry shown by dairy-company representatives, and wishes to place on record this aspect, which augurs well for the industry. The willingness of those representatives to subordinate individual company interests to the general well-being of the industry as a whole was one of the principal factors which enabled the Committee to discuss so freely and frankly what now becomes its final recommendations. It was evident that these representatives were most anxious that justice should be done to the dry shareholders of the various companies.

It would not be out of place to say here that the recommendations we have made did receive the unanimous support on their main points at all district meetings which were held, and at which some 200 of the 262 companies operating in New Zealand were represented. The Committee did not, however, indicate to those meetings its present recommendation that it should be obligatory upon companies to adopt the model set of Articles as a prerequisite to future registration. Further consideration since those meetings has led us to believe that, for the reasons set out in our report, such a recommendation is necessary, and will be accepted, we think, by the representatives who attended those meetings as coming within the spirit of our discussions.

The Committee would like to thank all directors and officers of dairy companies, the National Dairy Federation, and the various Associations of dairy companies who so readily gave such valuable assistance to the Committee. In addition, the Committee's thanks are due to the New Zealand Dairy Board and to the Department of Agriculture, who most kindly made available their facilities for various meetings.

Finally, we wish to express our appreciation of the services of Mr. J. E. Marshall, who was made available by the Department of Agriculture. He discharged all his duties as Secretary in a very efficient manner and was most helpful to the Committee in its deliberations and in the compilation of this report.

H. A. Foy.
C. H. Courtney.
F. W. Groom.
E. C. Adams.

31st January, 1949.

APPENDIX I

New Zealand Dairy Board,
Wellington, 15th March, 1948.

To The Chairmen,
All Co-operative Dairy Companies.

DEAR SIRS,

Arising from discussions at the 1947 National Dairy Federation Conference and following the passing of a remit sent from the Federation to the 1947 Dominion Dairy Conference of the New Zealand Dairy Board, a Committee was set up by the Board to report on the position of existing legislation affecting the Dairy Industry, with particular reference to non-supplying or "dry" shareholders, the adequacy of Articles of Association to provide for immediate and future developments of the Industry, and the incidence of taxation on amounts set aside as reserves. The preliminary investigation of this Committee indicated that in the interests of dairy companies and dairy farmers there was urgent need for fresh legislation, and it was recommended that, in order to ascertain the full extent of the difficulties to be overcome and the most satisfactory remedy, a Committee should be appointed by the Government to receive evidence in confidence and report to the Hon. the Minister of Agriculture.

With the approval of the Board I approached the Hon. Minister (Mr. E. Cullen), asking on behalf of the Industry that a Committee of enquiry be appointed. The Minister has now agreed to this request in respect to the first two matters, namely "dry" shareholders and Articles of Association, and has announced the Committee as Mr. H. A. Foy, Director of the Dairy Division, representing the Department of Agriculture (Chairman), Messrs. C. H. Courtney, Secretary of the New Zealand Dairy Board, and F. W. Groom, Office Solicitor to the New Zealand Co-op. Dairy Company Limited, representing the Dairy Industry, Mr. E. C. Adams, District Land Registrar, Wellington, representing the Registrar of Companies, and Mr. J. E. Marshall, Head Office, Department of Agriculture, as Secretary. The Minister felt that questions of taxation with their wide ramifications could not come properly within the scope of any Committee concerned principally with Industry matters. The opportunity which many dairy companies have been seeking for years is now available with the knowledge that evidence may be given in the assurance that it will be treated in strict confidence and for the purpose intended. It will not be passed on to any Government Department and will not go outside the members of the Committee. It is hoped that the deliberations of the Committee will result in adjustments of the difficulties that have been developing over a considerable period.

I have ascertained that the Committee desires typed submissions setting out the views of interested companies and individuals, and if possible these submissions by the end of April. After consideration of the submissions the Committee will fix an itinerary of visits to dairying centres to give opportunity for personal evidence and discussion.

In order to assist companies and individuals interested, might I suggest that submissions follow, as far as possible, common lines such as the following:—

(All information to be treated by the Committee as strictly confidential.)

Five typed copies to be supplied to Mr. J. E. Marshall, Department of Agriculture, P.O. Box 3004, Wellington.

1. Name of Company.
2. Date of Incorporation.
3. Copy of Memorandum and Articles of Association.
4. Copy of latest Annual Report, Balance Sheet, and Accounts.
5. Number of shareholders:—

(*a*) Supplying (wet)	.. ..	No.	Total Nominal Value £.....
	..		Total Paid-up Value £.....
(*b*) Non-supplying (dry)	.. ..	No.	Total Nominal Value £.....
			Total Paid-up Value £.....

6. Brief outline of policy for resumption of shares.
7. Suggestions as to remedy of position *re* non-supplying shareholders.
8. Outline of problems arising from defects in Articles, with particular reference to compulsory payment of dividends, voting powers of "wet" and "dry" shareholders, whether dairying operations are carried on in groups within the company or as a whole, and the general suitability of Articles to meet modern trends and in the undertaking of new projects.
9. Suggestions and recommendations generally on any of the above or related matters.

There is nothing to prevent individuals desiring to submit evidence in stating the extent and nature of any hardship which they fear might result to them from changes in the present general set-up, and if they so desire they may offer their suggestions as to how the present position can best be remedied.

In conclusion, the Board considers that the Dairy Industry should take the fullest advantage of the present opportunity being offered to put its house in order, and I would urge that this matter be treated seriously and dealt with promptly.

Yours faithfully,
W. E. HALE, Chairman.

APPENDIX II

Dairy Legislation Committee,

P.O. Box 3004,
Wellington, 21st May, 1948.

Circular to All Dairy Companies.

ON behalf of the Committee I wish to thank those dairy companies which have already forwarded submissions to the Committee in regard to their own company's affairs. These have been particularly helpful in a preliminary consideration of the "dry" share and administrative problems which are of concern to the Industry at the present time.

I would urge those companies which have not yet forwarded their submissions to do so at the earliest possible date. If they have not any particular problem, would they be good enough to give the statistical information requested by the Circular from the Chairman of the Dairy Board, and which is referred to on page 27 of the April "Exporter."

The Committee is of the opinion that it might be helpful to those companies who have not yet furnished their submissions for the Committee to give a precis of some of the problems and suggestions already received, that those companies might have an opportunity of commenting thereon.

If those companies which have already forwarded submissions desire to submit further comments on those points, these will be particularly welcomed by the Committee. As previously requested, please send in five copies to the Secretary at the above address. The following is the precis to which I have referred, the first two paragraphs being a *résumé* of what appears to be the statistical position.

DRY SHARES

1. The proportion of "dry" shares in individual companies is in most cases rather heavy compared with "wet" shares.

2. The number of "dry" shares in most cases appears to be on the increase.

3. Even if the 20% proportion now permitted to be resumed by the Dairy Industry Act, 1908, is increased, the present position would not be relieved to the extent anticipated by some companies for the reasons—

(*a*) That many companies are unable to find the necessary cash for the consequential resumption.

(*b*) That they consider it is not equitable that "dry" shares should be resumed at 20s. in the £, particularly when loyal shareholders in the past have been receiving much less than 20s.

(*c*) That as their "dry" shares do not carry a dividend, there is no real advantage to the company in finding now the necessary money to pay out those "dry" shares.

(*d*) That even where dividends are now being paid it is better to continue to do so and retain the use of that "dry" share money.

(*e*) That most companies consider that the dividend or interest rate should be reduced, if not altogether waived.

4. Some companies maintain that the "dry" shareholder is entitled to 20s. in the £, he having contributed his share of maintenance during his period of supply. Other companies maintain that the disloyal shareholder, by the withdrawal of his supply, caused a deterioration of the assets of the company and an increase in the manufacturing costs of the produce of the remaining shareholders.

5. The true function of a co-operative dairy company is submitted by some companies as being the processing of the raw material of the shareholders and not the earning of dividends or interest, and that on withdrawal of the supply of any shareholder he should be entitled then only to that rate of share resumption which he would get, assuming the company then liquidated, with an appropriate deduction in the case of a disloyal shareholder, and that the presence of dividend or interest earning "dry" shares is bringing into the Industry interests incompatible with true co-operation.

6. Suggestions have been received that all dairy companies should set aside a sum each season based on their butterfat turnover to provide a Reserve to meet the cost of share resumptions and also that companies should be enabled compulsorily to resume "dry" shares at their market rates and in the case of shareholders whose whereabouts are unknown the proceeds of such resumption to be transferred to a Reserve Account in the Company or a Public Account or forfeited to the Company.

7. It has also been suggested that "dry" shareholders shall not have a vote on any matters affecting the company or, again, that all "dry" shares be converted into unsecured debts (without, however, conferring any priority over "wet" shares on liquidation), and a rate of interest be paid thereon not exceeding Savings Bank rate.

ARTICLES

8. Submissions hereon disclose that many companies have in recent times made amendments to their Articles, particularly in regard to the rate of dividend or the rate of interest on shares, often altering the previously mandatory provision to an optional one. Some companies state that they have been advised by their solicitors that notwithstanding those alterations have been made in the manner set out in the Companies Act, the dissenting shareholders are not bound and can still demand the rate of dividend or interest previously applying.

9. Many of the submissions urge an alteration to the Articles to make the payment of a dividend optional, but no suggestions or recommendations have been received as to what should be done in respect of the " dry " shares thereby to be deprived of a dividend or an interest rate.

10. Another submission contains the suggestion that in lieu of dividends all shareholding suppliers receive a shareholders' bonus on their actual butterfat supply—in other words, no supply no bonus, neither should a supplier who is not a shareholder receive a bonus.

11. Again, a perusal of Articles sent in and of the submissions to hand indicate that many companies have no provision to enable them to diversify their manufacturing operations or to make differential payments to various sections of their suppliers; such a provision is particularly necessary where companies are now engaged in the Town Milk business or any combined cream and whole milk operations including, or course, manufacture of by-products.

12. Some companies have submitted that the Articles should empower all companies to make differential payments to cover the extra cost of collection and administration of what is known as the " billy can " supplier.

13. Another submission is that the contract between the company and the supplier shall, in the absence of writing to the contrary, be deemed to be for the then current season only, thus enabling the company to fix the basis from year to year and avoid being bound by customs of the past not equitable in the light of changing conditions.

14. It has also been suggested that the control and management of a dairy company should be in the hands of the " wet " shareholders only, and in particular that a 75% majority vote of " wet " shareholders at a properly-constituted meeting should bind all shareholders of the company, " wet " and " dry ", it being stated that the Courts have held that dissenting shareholders are not bound by any prejudicial alteration in which they do not acquiesce, thus permitting the minority to hold up changes in administration.

While many companies may feel satisfied that their written submissions as furnished to the Committee have given all possible information on their problems, some companies may still desire the opportunity of oral discussion with the Committee. With this in view it is the intention of the Committee to visit several centres. If your company's representatives wish to meet the Committee for further discussion, I shall be pleased to receive your notification accordingly at the earliest possible date, so that a suitable itinerary might be arranged.

I would reiterate the statement of Mr. W. E. Hale, Chairman of the New Zealand Dairy Board, to the effect that all submissions, whether written or oral, will be treated in the strictest of confidence by the Committee.

H. A. Foy,
Chairman, Committee on Dairy Legislation.

APPENDIX III

ARTICLES OF ASSOCIATION OF.....

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 existing.

2. The Company shall be entitled to be registered as a co-operative dairy company under the provisions of Part III of the Dairy Industry Act, 1908, and any amendments thereof.

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

INTERPRETATION

4. In these Articles, unless inconsistent with the subject-matter or the context,—

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

"The Company" means ..... Co-operative Dairy Co., Ltd.:

"Capital" means the capital for the time being of the Company:

"Member" or "Shareholder" means the holder for the time being of shares in the Company:

"*Bona fide* member" means any shareholder of the Company:—

(*a*) Who, after making provision for his own reasonable domestic requirements, if any, and except so far as he may be relieved from so doing by the Directors, supplies for the time being to the Company the whole of the milk, cream, or butterfat obtained from cows owned by him or subject to his control depasturing on land conveniently served by the Company and from which the Company is permitted at law or by agreement to accept supply:

(*b*) Who so supplies the Company continuously during the particular financial year of the Company in which it becomes necessary to define his status for any of the purposes of these Articles: Provided, however, if he is not actually supplying at that time by reason of the said cows not being in profit, but will in the opinion of the Directors re-commence to supply the Company as above as soon as the said cows next come into profit in the ordinary course of dairy-farming, he shall be deemed to be supplying continuously:

(*c*) Who while so supplying continuously shall have performed all his obligations in respect of shareholding, including payment of all sums presently due in respect of such shareholding, which the Directors may have required of him at the particular date in pursuance of their authority so to do:

And the decision of the Directors as to whether a person is a *bona fide* member or a dry shareholder shall be final: And provided, however, no shareholder who has not supplied milk, cream, or butterfat to the Company at any time during the period of eight months immediately preceding the date it becomes necessary to define his status as aforesaid shall be deemed to be a *bona fide* member: And, provided further no two or more members shall be entitled to qualify as *bona fide* members in respect of the same shares in any one financial year of the Company, and the first named of the shareholders in whose names such shares are registered at the date of the annual closing of the shares register shall be the only one entitled to use such shares to so qualify:

"Dry shareholder" means the holder of a share or shares in the Company who is not a *bona fide* member as defined above:

"Dry share" means a share held by a dry shareholder:

"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 and which imposes upon the supplier thereof an obligation to take up or hold one share in the Company in respect of such supply:

"The Directors" means the Directors for the time being of the Company:

"Secretary" includes any person appointed to perform the duties of Secretary temporarily:

"The Office" means the registered office for the time being of the Company:

"The Register" means the Register of Members to be kept pursuant to the Companies Act, 1933:

"Month" means calendar month:

"Financial Year of the Company" means the period commencing on the ..... day of ..... and ending on the ..... day of ..... in the next succeeding year:

"In writing" and "written" includes written, typewritten, printed, lithographed, partly written, printed, and other modes of representing or reproducing words in a visible form.

Words importing persons include firms, partnerships, companies, and corporations:

Words importing the singular number also include the plural number, and *vice versa*:

Words importing the masculine gender also include the feminine gender:

"The Seal" means the Common Seal of the Company.

"The Articles" and "these regulations" mean and include these Articles of Association and any modification, extension, variation, or alteration thereof made from time to time and in force for the time being.

SHARES

5. Subject to the provisions of these Articles, the shares 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 shall 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 *bona fide* members 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 *bona fide* members. To every such separate general meeting the provisions of these Articles relating to general meetings shall, *mutatis mutandis*, apply, but so that the necessary quorum shall be five *bona fide* members at least holding or representing by proxy one-third of that portion of the issued shares of the class, group, or section held by *bona fide* members, and that any holder of shares of the class, group, or section present in person or by proxy being a *bona fide* member 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 such 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 such persons may give effectual receipts for any moneys payable in respect of such 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 milk, cream, or butterfat 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 such member until the whole amount of the moneys payable by such member on shares held by him has been paid: Provided, however, should any member cease or fail to supply milk, cream, butterfat, or other dairy-products in accordance with any contract made between him and the Company or in accordance with these Articles in respect of the supply of such products as aforesaid, then 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 such amount shall thereupon become payable as herein provided.

13. Subject to the provisions of the immediately preceding Article, 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 such 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 such member to the Company for or in respect of arrears of calls on the shares held by such member.

15. The liability of joint holders of a share in respect of the calls or sums payable on such share shall be several as well as joint.

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

17. If the call or any other amount 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 such share shall be liable to pay interest on the same at such rate as the Directors may determine not exceeding the rate of £10 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 such debt accrued, that the resolution making the call is duly recorded in the minute-book, and that notice of such 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 such call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt.

19. Notwithstanding anything herein contained and any rule of law to the contrary notwithstanding, 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 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 such member requiring him to pay such call or instalment, together with interest and any expenses that may have accrued by reason of such non-payment.

21. The notice shall name a further day (not being less than ten days from the date of such notice) on or before which such call or instalment and all interest and expenses (if any) that have accrued by reason of such 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 such 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 such 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 notwithstanding be liable to pay and shall forthwith pay to the Company all calls, instalments, interest, and expenses owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of £10 per centum per annum; and the Directors may enforce the payment thereof if they think fit.

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 such share has been disposed of, together with such sum as the Directors may require to repay expenses incurred in respect of such 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, such share shall then revert to the person entitled thereto previously to the forfeiture and be held by him thereafter in the same manner as if no such forfeiture had taken place.

RESUMPTION OF SHARES

29. Subject to the provisions of Part III of the Dairy Industry Act, 1908, or any amendment thereof or any statute in substitution therefor, the Directors may at any time accept the surrender of any share from any member desirous of surrendering the same upon such terms as the Directors shall in each case determine: Provided that where the number of shares so offered at any given time for surrender is greater than the number which the Directors may at the time lawfully accept, then the Directors shall (subject to the provisions of any contract to the contrary) deal with the application of members in the order in which the same shall have been received by the Company.

30. Should any member cease to be a *bona fide* member and so continue for a period of not less than twelve months, the Directors may, as by law permitted, require such member to surrender to the Company all shares held by him at their paid-up value or for such lesser sum as the Directors may be permitted by law so to pay.

31. For the purpose of keeping the shareholding of members in proper relation to their supply of milk, cream, or butterfat to the Company, the Directors may, as by law permitted, resume the excess shareholding of any member or any part thereof at its paid-up value or for such lesser sum as the Directors may be permitted by law so to pay. Excess shares shall be deemed to be those shares of any member which he would not now be required on current standards of shareholding to hold in respect of his maximum supply of milk, cream, or butterfat to the Company in any of the five years immediately preceding any such resumption.

TRANSFER OF SHARES

32. 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 shares until the transferee is entered in the register-book in respect thereof.

33. The Directors may, in their absolute discretion, refuse to register any transfer of a share or shares.

34. If the Directors refuse to register a transfer of any shares, 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.

35. There shall be payable to the Company on the registration of every transfer of shares 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.

36. Every instrument of transfer shall be left at the office of the Company for registration, and the certificate of the shares 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.

37. 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.

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

39. All instruments of transfer which shall be registered shall 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

40. The legal personal representatives of a deceased sole holder of a share shall be the only persons 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 representatives of the deceased survivor, shall be the only persons recognized by the Company as having any title to the share. This Article shall be read subject to the provisions of section 6 of the Statutes Amendment Act, 1941, or of any enactment passed in substitution therefor.

41. 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.

LIEN ON SHARES

42. The company shall have a lien for all debts, obligations, and liabilities of any member of the Company upon all shares held by such 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 resepct of such shares: Provided always that if the Company shall register any transfer of any shares upon which it has such a lien as aforesaid without giving to the transferee notice of its claim, the said shares shall be freed and discharged from the lien of the Company.

FORFEITURE OF SHARES

43. The Company may sell, in such manner as the Directors think fit, any shares 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.

44. For giving effect to any such sale the Directors may authorize some person to transfer the shares 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.

45. 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

46. 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.

47. 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

48. 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.

49. 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

50. 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.

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

52. 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.

53. 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.

54. 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.

55. 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 such notice to any member or the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

56. 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 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

57. 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.

58. A quorum shall consist of not less than ..... *bona fide* members personally present and holding or representing by proxy not less than ..... shares of the Company.

59. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon such requisition 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 such 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.

60. 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 such 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 *bona fide* members present shall choose another Director as Chairman; and if no Director be present, or if all Directors present decline to take the chair, then the *bona fide* members present shall choose one of their number to be Chairman.

61. The Chairman may, with the consent of 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.

MEETINGS PRIVATE

62. 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 such meeting.

63. Every question submitted to a meeting shall be decided in the first instance by a show of hands of the *bona fide* members; and in the case of an equality of votes the Chairman 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 *bona fide* member.

64. At any general meeting, unless a poll is demanded by the Chairman or by at least five *bona fide* members holding or representing by proxy and entitled to vote in respect of at least one-tenth of the capital held by the *bona fide* members 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 such resolution. The provision that the five *bona fide* members 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.

65. 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.

66. 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.

67. 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

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

69. Notwithstanding anything herein contained to the contrary, no *bona fide* member holding less than ..... shares shall be entitled to vote either upon a show of hands, upon a poll or in a postal ballot, or in any way whatsoever.

70. On a show of hands, every *bona fide* member present shall have one vote.

71. Upon a poll, every *bona fide* member 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*].

72. Upon the holding of a postal ballot, every *bona fide* member shall be entitled to the number of votes as set out in the immediately preceding Article.

73. 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.

74. 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.

75. Where there are joint registered holders of any share and where such joint holders are otherwise qualified to vote, any one of such joint holders may vote at any meeting, either personally or by proxy, in respect of such share as if he were solely entitled thereto; and if more than one of such 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 such shares shall alone be entitled to vote in respect of the same. Several executors or administrators of a deceased member in whose sole name any shares shall stand 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 such shares shall alone be entitled to vote in respect of the same.

76. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing. If such 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 *bona fide* member 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 such corporation, whether a *bona fide* member of the Company or not.

77. 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 *bona fide* member of the ..... Co-operative Dairy Co., Ltd., hereby appoint ....., of ....., being a *bona fide* member, or, failing him, ..., being also a *bona fide* member, 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...

78. 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 such instrument proposes to vote.

79. 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 shall have been received at the office of the Company before the meeting.

80. Any instrument appointing a proxy given by a *bona fide* member shall be deemed to be revoked on receipt from such *bona fide* member 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 such proxy is given.

81. 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

82. 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.

83. No person shall be qualified to act as a Director unless he is a *bona fide* member of the Company holding not less than ..... shares in the capital of the Company and has supplied in the immediately preceding financial year of the Company not less than ..... lb. of butterfat per medium of milk, cream, or butterfat: Provided, however, the provisions of this Article shall not apply to the Managing Director for the time being.

84. 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 such retirement shall take effect upon the expiration of such notice or the earlier acceptance of his resignation.

85. No Director shall be disqualified by his office from holding any office or place of profit under the Company nor for contracting with the Company either as a vendor, purchaser, or otherwise, nor shall any such contract or arrangement, nor 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 shall be a member or otherwise interested, be avoided, nor shall any Director so contracting or being such member or so interested be liable to account for any profit realized by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relation thereby established, provided that 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.

86. 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 such 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 immediately preceding Article shall not apply in respect of any contract for the supply by all or any of such Directors of milk, cream, or butterfat to the Company.

87. 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 this Article as regards such Director and the said transactions, and after such general notice it shall not be necessary for such Director to give a specia lnotice relating to any particular transaction with that firm or company.

88. 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. The Directors shall also be entitled to be paid their reasonable entertainment, 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—

(i) If he ceases to be a *bona fide* member holding at least ..... shares in the capital of the Company; or

(ii) At the next following ordinary general meeting after the close of the financial year if he has failed to supply ..... lb. of butterfat during that said financial year: provided that this and the immediately preceding subclause shall not apply to the Managing Director; or

(iii) If he becomes bankrupt; or

(iv) If he becomes of unsound mind, or becomes a protected person under the Aged and Infirm Persons Protection Act, 1912; or

(v) If he resigns his office in accordance with the provisions of Article 84 hereof.

ELECTION OF DIRECTORS; 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 Article 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 shall have been nominated in writing. Every such nomination must be made and signed by two *bona fide* members (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 office of the Company addressed to the Secretary, not later than seven clear days before the meeting.

HOW VACANCIES ARE FILLED

93. Subject to the provisions of Article 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, 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 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

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 such 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 Regulations the Directors shall not, except for the purpose of filling vacancies, act so long as the number is below the said minimum.

ALTERNATIVE ARTICLES

For Election of Directors by Postal Ballot

99. [*Set out appropriate Articles for the calling of nominations within twenty-one days before the date of the general meeting, the conduct of such an election, including a provision that if a member entitled to vote votes for a lesser number of candidates than there are vacancies or offices to be filled, his vote shall be invalid, and in lieu of filling up any casual vacancy in terms of Article 97 hereof the Directors may, in their discretion, hold a by-election.*]

ALTERNATIVE ARTICLES

For Provision for Wards or Electoral Districts

100. [*Set out appropriate Articles giving power to the Directors to subdivide the territory of the Company into electoral districts or wards and to alter or vary the same from time to time, and to conduct elections therein by postal ballot.*]

ALTERNATIVE ARTICLES

For Election of Maori Directors

101. [*Set out appropriate provisions for the election of such Directors.*]

INDEMNITY OF DIRECTORS

102. 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.

103. If the Directors or any of them or any other persons 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 persons so becoming liable as aforesaid from any loss in respect of such liability.

MANAGING DIRECTOR

104. The Directors may from time to time appoint one of their body to be a Managing Director 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 such 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 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.

105. A Managing Director shall not while he holds such office 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

106. 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.

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

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

109. 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) is to hold office, and unless otherwise determined they shall be elected annually.

110. 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, then the Deputy Chairman, if there has been one appointed, shall preside, and should there be no Deputy Chairman, or, if one, he be absent or unable to act, then the Directors present shall choose some one of their number to be Chairman of the meeting.

111. 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 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.

112. 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.

113. 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 such 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 Managing Director.

114. 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

115. 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 such meeting, or by the Chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

POWERS OF DIRECTORS

116. 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 regulations shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

BRANCH REGISTERS

117. 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

118. 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

119. 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.

120. 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.

121. 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.

122. 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.

123. 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 auditors' 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

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

TRADE SECRETS

125. No member 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 member shall be entitled to inspection of any books, papers, correspondence, or documents of the Company except so far as such inspection is expressly authorized by statute or by these presents.

REPEAL OF PRIOR ARTICLES

126. The Articles which heretofore and up to this date have been in force are hereby repealed, and these Articles now passed by special resolution in accordance with the Companies Act, 1933, and the Dairy Industry Act, 1908, and its amendments are adopted in lieu of such former Articles, and these new Articles shall henceforth operate and apply as effectually as if they had been adopted originally upon the formation of the Company.

WINDING-UP

127. If the Company shall be wound up and the assets available for distribution amongst the members as such shall be insufficient to repay the whole of the paid-up capital, such 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. And if in a winding-up the assets available for distribution amongst the members shall be 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. But this clause is to be without prejudice to the rights of the holders shares issued upon special terms and conditions.

VALIDATING CLAUSE

128. The special resolution repealing the Articles of Association of the Company in existence prior to the adoption by the Company of these Articles shall not affect anything done or purporting to have been done under the Articles so repealed; and all resolutions passed at any meeting of the Company or of the Directors and all contracts entered into, liabilities incurred, shares or debentures issued, mortgages or other securities given, and all arrangements made and existing for dividing the shares of the Company in different classes and for attaching thereto various rights or liabilities, privileges, burdens, or obligations whatsoever, and all other acts, deeds, matters, things, and appointments made, done, or entered into by the Company or the Directors are hereby confirmed, notwithstanding any irregularity or defect that may have existed in connection therewith under any of the repealed Articles.

NOTICES

129. (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.

130. In cases not hereinbefore specially provided for, notices may be served by the Company upon any member either personally, or by leaving the same at, or by sending the same through the post addressed to such member at, his registered address or his usual or last-known place of abode or business.

131. 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.

132. Notices to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the Register of members, and notice so given shall be sufficient notice to all the holders of such share.

133. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same is put into the post-office; and in proving such service a statement by the Secretary that the notice was posted by him or under his direction to the address of any member shall be conclusive evidence of the fact.

134. Notices required to be given by newspaper advertisement shall be advertised in at least one newspaper circulating generally throughout the area served by the Company.

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

136. Any notice or document delivered or sent by post to or left at the registered address or address for service of any member in pursuance of these regulations shall, notwithstanding such member be then deceased or shall be in any way incapacitated, and whether the Company have notice of his decease or incapacity or not, be deemed to have been duly served in respect of his share or stock, whether held solely or jointly with other persons, unless and until some other person be registered in his stead as the holder or joint holder thereof; and such service shall, unless and until such registration as aforesaid be effected, for all purposes be deemed a sufficient service of such notice or document on his heirs, executors, administrators, successors, assigns, or committees, and all persons (if any) jointly interested with him in any such shares or stock.

137. 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 such notice will expire shall be, included in such number of days or other period.

138. Each holder of registered shares or stock 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 the last preceding regulation; 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 such 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

139. All milk, cream, or butterfat or other dairy-products (hereinafter referred to as "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 or of any additions or alterations thereof made in the manner herein set out or by law permitted.

SHAREHOLDING BY SUPPLIERS

140. Subject to the provisions of the immediately preceding Article, 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 shall 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 such shares until the quantity so supplied for the particular financial year is ascertained, and such persons shall be entitled to the allotment of shares accordingly: Provided, however, 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 1,000 lb. of butterfat in the financial year in question or should he, in the opinion of the Directors, be unlikely to become a *bona fide* member of the Company.

141. 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 estimated to be supplied or supplied by him during that financial year.

142. If on the last day of any financial year of the Company it shall appear 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 immediately preceding Article, it shall be lawful for the Directors to immediately allot, without any application therefor by or on behalf of such member, such further number of shares as shall be required to bring the number of shares held by such member up to the number required to be held by him in terms of these Articles.

143. In lieu of allotting the full number or estimated number of shares required to be held in terms of Articles 140 to 142 inclusive hereof, the Directors may at any time or from time to time, until such person shall have been allotted the total number of shares he is required to hold in accordance with these Articles, apply any amounts as may be payable to such person as share credits in respect of that portion of his supply of dairy-produce for which he does not then hold shares, the provision for such amounts being contained in Article 147 (*a*) hereof, towards the payment in full of such number of fully paid shares as can be paid up in full out of such amounts, and shall allot such fully paid shares accordingly, together with a partly paid share for any remaining part of the said amount.

PAYMENTS AND RETURNS

144. 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, either local, British, or foreign, as the Directors shall in their uncontrolled discretion consider advisable or as may be required by law.

145. 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, including therein any penalties or charges of the character specified in Articles 156 to 158 inclusive hereof, the whole or so much thereof as the Directors may 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 Articles 155 to 157 inclusive 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 may think fit, and the Directors may from time to time use all or any part of the moneys so set aside for all or any of the purposes referred to in this Article.

PROGRESS PAYMENTS

146. The Directors may in respect of the dairy-produce received by the Company during the preceding month make to each person supplying such dairy-produce such progress payments of such amounts and calculated in accordance with the provisions of the immediately preceding Article as they may consider advisable having regard to their estimate of the net returns of that dairy-produce, and such progress payments shall be due and payable upon the 20th day of the month following the month in which such dairy-produce was supplied or on such other monthly date as the Directors from time to time may determine and subject to the payment of any premiums or the deduction of any penalties in terms of Articles 155, 157, and 158 hereof, and they may, if they think fit, make any further progress payments in respect of the dairy-produce so supplied during any previous month or months of the then financial year: Provided, however, the Directors in their discretion may refrain from making any such progress payments in any month or months if they deem it advisable so to do.

DISTRIBUTION OF NET RETURNS

147. (*a*) If the net annual returns for dairy-produce are in excess of the total amount paid out by the Company as progress payments in accordance with the immediately preceding Article hereof, the Directors shall make in the month of ....., or in such other month as they may from time to time determine, a final payment, whether by instalments or otherwise, to each *bona fide* member and to each person treated by the Directors as a *bona fide* member of his due proportion of the net annual returns in proportion to the quantity of butterfat supplied or, where a gallonage or weight of milk basis be fixed by the Directors in respect of his supply, then in proportion to the quantity of milk supplied, if they think fit, firstly by making a payment at a rate as they may fix from time to time per pound of butterfat and/or of gallons or weight of milk on the quantity of dairy-produce supplied by each *bona fide* member and by each person treated by the Directors as a *bona fide* member in respect of which they hold shares in the Company in accordance with these Articles: Provided, however, the Directors may make a similar payment on each portion of the dairy-produce of those persons not so covered by shares as aforesaid so long as payments therefor are utilized on behalf of those persons for the purpose of meeting the cost of further fully paid shares in the manner set out in Article 143 hereof. And secondly by making payment of the balance, whether by instalments or otherwise and at the times hereinbefore fixed, to each *bona fide* member and to each person treated by the Directors as being a *bona fide* member of his due proportion thereof in proportion to the quantity of butterfat supplied by him or, where a gallonage or weight of milk basis be fixed by the Directors, then in proportion to the quantity of milk supplied by him.

(*b*) If the net annual returns for such dairy-produce as aforesaid are less than the total amount so paid out by the Company on the foregoing progress payments and purchase payments, the Directors may require each such *bona fide* member or person treated as such to refund his proportion of the amount so as aforesaid paid in excess of the net annual returns; and upon every such request being made in writing, the amount found to be so owing by each *bona fide* member or other person so treated as such shall constitute a debt owing by such *bona fide* member or other person so treated to the Company and be recoverable by the Company from such *bona fide* member or other person so treated by action at law, or may be retained by the Company out of any future payments for dairy-produce made by the Company to such *bona fide* member or other person treated as such.

(*c*) Upon all payments having been made in accordance with the provisions of subclause (*a*) of this Article, the Company shall thereupon be deemed to have fully accounted to each *bona fide* member or person treated as such for his full share of the net annual returns of the dairy-produce supplied by each member or person treated as such: Provided, however, should the Company later receive further returns or realizations in respect of such dairy-produce, the Directors may, if they deem it equitable so to do, make a further distribution in accordance with the provisions of subclause (*a*) of this Article, or they may retain such further returns or realizations as additional realizations in respect of the financial year in which they are so received.

SUPPLY FROM NON-MEMBERS

148. The Directors may, if they see fit so to do, purchase from any person or persons, other than *bona fide* members of the Company, without requiring such person or persons to take up shares in the Company, dairy-produce, and the price payable therefor shall be determined in accordance with the Articles hereinafter set forth.

149. (*a*) All dairy-produce supplied by a non *bona fide* member or by a person not treated as a *bona fide* member by the Directors shall, in the absence of any agreement as to price between the Company and such member or person, be deemed to be purchased by the Company at a price corresponding to that which is paid by the Company to its *bona fide* members as a progress payment on the 20th day of each month or such other determined date in accordance with Article 146 hereof for dairy-produce supplied to the end of the preceding month. Such non *bona fide* member or other person as aforesaid shall not by virtue alone of his so supplying dairy-produce to the Company be entitled in any way to claim or to participate in any rebates, allowances, or in any of the other payments, whether final or otherwise, which in accordance with these Articles the Company may subsequently make to *bona fide* members and to persons treated as such.

(*b*) If it should be discovered that the amount paid to such non *bona fide* members or other person, in respect of such dairy-produce is in excess of that which ought properly to have been paid therefors the Directors may require such non *bona fide* members or other persons to refund the amount so paid in excess. The amount, if any, so paid in excess shall, on being demanded by the Directors by notice in writing, constitute a debt by such non *bona fide* members or other persons to the Company. Such debt or debts may be recovered by the Company by an action at law or may be retained by the Company out of any future payments which may become due by the Company to such non *bona fide* members or other persons, or any of them, in respect of dairy-produce supplied to the Company.

(*c*) Notwithstanding anything to the contrary in these Articles contained or implied, the Directors may pay to such non *bona fide* members or other persons such rebates, allowances, and (or) other payments, whether final or otherwise, or such part or parts thereof, as they may in their discretion think fit; but in any case such rebates, allowances, or payments shall not exceed proportionately the amounts payable to *bona fide* members; And it is hereby expressly provided that nothing in this Article contained shall in any way limit or derogate from the powers of the Directors as set forth in these Articles in respect of those members who by virtue of a substantial compliance with the definition of *bona fide* member are, in the discretion of the Directors, treated as *bona fide* members.

REBATES

150. 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 may 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 may consider equitable by way of bonus or otherwise amongst such members all or any part of the surpluses resulting from such operation.

OTHER INCOME

151. 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 Article 145 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

152. 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. Such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the Company's lien on such shares.

RIGHT TO DEDUCT FOR GOODS SUPPLIED

153. The Company shall 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 such supplier or member.

ASSIGNMENTS OF MONEYS PAYABLE TO MEMBERS

154. 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

155. 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 at any particular factory, place, or times as they shall from time to time consider to be necessary.

GRADING OF DAIRY-PRODUCE

156. The Directors may from time to time, in their sole discretion, grade or class, and regrade or reclass, all milk, cream, butterfat, and other 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 rule of law, fix and determine the various grades or classes into which the said produce so supplied shall be placed. In determining such grades and classes the Directors may take into consideration the quality and effect of such produce upon the articles manufactured by the Company, and may also have regard to such other matters as they may think fit in the best interests of the Company.

157. The Directors may grant and pay from time to time premiums or allowances for various quality grades or classes of dairy-produce, and they may fix or determine 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 and determined in the immediately preceding Article.

SMALL SUPPLIES OF DAIRY-PRODUCE

158. The Directors may from time to time, for the purpose of meeting or partly meeting the additional cost (if any) of the transport, handling, maufacture, and/or 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 shall deem equitable.

CONTROL OF SUPPLY OF PRODUCE

159. The Directors shall be at liberty from time to time to refuse to accept any dairy-produce or part thereof supplied by any person if in their opinion—

(*a*) Such 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*) Such person has been dishonest in his dealings with the Company; or

(*c*) The farmyard surroundings or place from which such dairy-produce is obtained is or are dirty or unhealthy; or

(*d*) Such person or his family or assistants or their families are suffering from any infectious disease which might detrimentally affect such dairy-produce,—

or if for any other reason which the Directors in their sole discretion consider it inimical to the interests of the Company to accept such dairy-produce, and they shall be under no liability to make any recompense to such person for any such refusal, and such person shall have no recourse against either the Company or the Directors whatsoever.

160. If any or all the operations of the Company at any one or more of its branches, factories, or creameries should be delayed, hampered, impeded, or in any 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 such delay, hampering, impediment, or prevention of work, but during the continuation of such 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 such strike, lock-out, or other stoppage as aforesaid: Provided, however, that if any branch, factory, or creamery of the Company is not prejudicially affected thereby the Directors shall endeavour to arrange for such branch, factory, or creamery to accept such 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 such 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 such member or person shall have, in respect of such refusal, no recourse whatsoever against the Company or its Directors.

161. 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, depot, 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, and the person supplying shall be responsible for the cleanliness thereof. Morning milk shall be kept in separate containers from the afternoon's milk. In lieu of making available such dairy-produce in containers to be transported, the person supplying may be required from time to time to hold same 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 by law required, unless such 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 may from time to time stipulate.

162. The Directors may from time to time, in lieu of requiring delivery by persons of their dairy-produce as hereinbefore provided, undertake on behalf of all such persons or of any groups thereof the collection of their dairy-produce on such basis or bases as the Directors shall deem equitable, with or without a general charge upon the dairy-produce of such persons or groups of persons or different charges to individual persons as they consider to be in the best interests of the Company. Conversely, the Directors may make any payment or allowance to such persons or groups of persons as a consideration for delivery in any particular manner time or place as they, the Directors, shall think fit.

163. Where milk is delivered to the Company for cheese or casein making the person supplying the same shall be responsible to the Company for the prompt removal of his proportion of the resulting whey, unless he shall firstly make and the Company agrees to arrangements for its disposal otherwise.

SPECIAL GROUPS

164. 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 of the above. The above 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, *mutatis mutandis*, apply to such special groups.

165. 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 shall think fit.

166. No member or person shall without the 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 substantially greater quantity of dairy-produce to any special group than that which was supplied by him to such special group in the immediately preceding season.

167. 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 below opposite the name of the special group: Provided, however, that 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 such 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 shall be supplying dairy-produce: [*Set out names of special groups and their share standards*].

168. 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.

169. 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 Article 145 hereof as the Directors may consider equitable and shall be distributable amongst the *bona fide* members and persons treated as such supplying dairy-produce to such special group as if such special group were a separately operated and conducted co-operative dairy company, and the provisions of Articles 145 to 149 hereof, both inclusive, shall, *mutatis mutandis*, apply thereto.

170. Notwithstanding anything herein to the contrary, the Directors may from time to time utilize 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 behalf of any other special group or of the Company as a whole on such basis or bases as the Directors shall deem equitable, and the allowance for such produce to the special group making it so available shall be deemed to be part of its market realizations.

171. 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 year in which it is so set aside or in any subsequent 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 so to do 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 such 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 returns 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

172. Without in any way limiting the authority of the Directors, they may from time to time set up committees of suppliers from any or each of the special groups 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, and/or the Directors may at any time and from time to time if they think fit call a meeting of the *bona fide* members 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 *bona fide* members 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 *bona fide* members as hereinbefore set out, the Directors may conduct a postal ballot among the *bona fide* members of any special group in such manner as the Directors shall 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 such special group and shall be binding upon them accordingly.

173. The Directors may from time to time make such rules as they think fit for the election, term of office, and for 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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