

**UNITED MILK PRODUCTS LTD (AMALGAMATION) ACT
1981**

No. 33 of 1981

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AN ACT to provide for the amalgamation of the undertakings of United Milk Products Ltd, North Eastern Co-operative Dairy Society Limited, Nedco Cool Stores Proprietary Limited, and Nedco Co-operative Society Limited and of any other company to which the Act is declared by order-in-council to apply and to provide for related matters.

[Royal Assent 20 May 1981]

WHEREAS the directors of North Eastern Co-operative Dairy Society Limited, Nedco Cool Stores Proprietary Limited, and Nedco Co-operative Society Limited (in this preamble referred to as the Nedco group) have provisionally agreed with the directors of United Milk Products Ltd that the undertakings of the Nedco Group should be amalgamated with the undertakings of United Milk Products Ltd, subject to the passing of special resolutions of the members of the companies comprising the Nedco group and the members of United Milk Products Ltd approving the amalgamation:

AND WHEREAS by reason of the fact that North Eastern Co-operative Dairy Society Limited and Nedco Co-operative Society

Limited are incorporated under the *Co-operative Industrial Societies Act 1928* it is not reasonably practicable to effect the amalgamation under the *Companies Act 1962*:

AND WHEREAS it is expedient to provide for any other company or society carrying on a business that includes the manufacture of milk products to be included in the amalgamation scheme where the company or society indicates that it wishes to be so included:

AND WHEREAS it is therefore expedient that the amalgamation scheme should be effected by an Act of the Parliament:

BE IT THEREFORE ENACTED by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and the House of Assembly, in Parliament assembled, as follows:—

Short title.

1—This Act may be cited as the *United Milk Products Ltd (Amalgamation) Act 1981*.

Interpretation.

2—(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“amalgamating companies” means United Milk Products Ltd, the members of the Nedco group, and any company that is a declared company;

“Commissioner” means the Commissioner for Corporate Affairs;

“company” means a company registered under the provisions of the *Companies Act 1962* or a company or society registered or incorporated under the provisions of any other Act;

“declared company” means a company declared by order-in-council under subsection (2) to be an amalgamating company for the purposes of this Act;

“instrument” means a document, other than an Act, that creates, evidences, modifies, or extinguishes rights or obligations;

“land” includes an estate or interest in land;

“legal proceedings” includes an arbitration;

“member of the Nedco group” means a company that forms part of the Nedco group;

“Nedco group” means North Eastern Co-operative Dairy Society Limited, Nedco Cool Stores Proprietary Limited, and Nedco Co-operative Society Limited;

“obligations” includes duties and liabilities;

“property” means any legal or equitable estate or interest, whether present or future and whether vested or contingent, in real or personal property of any description, and includes things in action;

“relevant day” means the day determined by reference to section 3 as the day on which the amalgamation of the undertakings of the amalgamating companies has effect;

“rights” includes powers and privileges;

“security” means a mortgage or charge, whether legal or equitable, or a debenture, bill of exchange, promissory note, guarantee, lien, or pledge, or any other security for the payment of money or for the discharge of an actual or contingent obligation;

“special resolution”, in relation to an amalgamating company, has the meaning assigned to that expression by section 144 of the *Companies Act* 1962 and has that meaning whether or not the company is a company within the meaning of that Act;

“undertaking”, in relation to an amalgamating company, means all property of that company and all rights and obligations of that company.

(2) Where a company which carries on a business that includes the manufacture of milk products notifies the Governor in writing before the relevant day that it wishes to participate in the scheme of amalgamation proposed to be effected by this Act, he may, by order-in-council, declare that company to be an amalgamating company for the purposes of this Act.

(3) This Act shall be read as one with the *Companies Act* 1962 and that Act is, in its application to United Milk Products Ltd, modified only in so far as expressly provided by this Act.

3—(1) The directors of each amalgamating company shall forthwith after the commencement of this Act convene an extraordinary general meeting of the company to be held as soon as practicable, but in any case not later than 2 months, after that commencement for the purpose of considering a special resolution to approve the amalgamation of the undertakings of the amalgamating companies.

Special resolutions.

(2) If an amalgamating company, at an extraordinary general meeting held in accordance with subsection (1), passes the special resolution referred to in that subsection, the directors of the company shall cause a copy of the resolution to be lodged with the Commissioner in accordance with section 146 of the *Companies Act 1962*.

(3) United Milk Products Ltd shall, in addition to the special resolution referred to in subsection (2), lodge with the Commissioner in accordance with section 62 of the *Companies Act 1962* a notice in the form prescribed for the purposes of that section giving particulars of the increase in the share capital of the company that will result from the amalgamation of the undertakings of the members of the Nedco group and of any declared company with the undertaking of United Milk Products Ltd.

(4) The day on which the amalgamating companies lodge special resolutions in accordance with subsection (2) or, where those resolutions are lodged on different days, on the last of those days, shall, for the purposes of sections 4 to 12, be the relevant day.

Amalgamation
of under-
takings of
United Milk
Products Ltd,
Nedco group,
&c.

4—(1) On the relevant day—

- (a) the undertakings of the Nedco group and of any declared company are amalgamated with the undertaking of, and are vested in, United Milk Products Ltd;
- (b) the members of the Nedco group and any company that is a declared company are dissolved;
- (c) the issued share capital of United Milk Products Ltd is increased by an amount equivalent to the aggregate of the amounts of the issued share capital of the members of the Nedco group and of any declared company; and
- (d) persons who are holders of shares of members of the Nedco group and of any declared company shall be deemed to be holders of shares in United Milk Products Ltd of the same nominal value and paid up to the same extent as the first-mentioned shares and there shall be deemed to be attached to those shares the same rights and obligations as those which are attached to shares of United Milk Products Ltd.

(2) On and after the relevant day, except in so far as the context or subject-matter otherwise indicates or requires, where in an instrument that was in force immediately before that day there is a reference to a member of the Nedco group or a declared company, that instrument shall continue in force as if that reference were a reference to United Milk Products Ltd.

5—(1) Where after the relevant day a person who holds shares referred to in section 4 (1) (d) surrenders those shares to United Milk Products Ltd, that company shall, as soon as practicable, and in any case within 2 months, after the date on which those shares are surrendered, cancel those shares and issue to that person in their place shares of United Milk Products Ltd of the same nominal value as the surrendered shares.

Issue of United Milk Products Ltd shares to holders of Nedco group shares.

(2) As soon as practicable after the relevant day, United Milk Products Ltd shall cause particulars of all persons who, on that day, appeared to be the holders of shares referred to in section 4 (1) (d), to be entered in the register of its members as required by section 151 of the *Companies Act 1962*.

6—(1) Without limiting the effect of section 4, the following provisions have effect on and from the relevant day:—

Supplementary provisions with respect to securities.

- (a) a security given by a member of the Nedco group or a declared company as security for the discharge of an obligation outstanding from that member or company and subsisting immediately before that day shall be deemed to have been given by United Milk Products Ltd and the holder of such a security shall be entitled to all the rights and priorities and be subject to all the obligations to which that holder would have been entitled or subject if this Act had not been passed;
- (b) a security held by a member of the Nedco group or a declared company as security for the discharge of an obligation outstanding to that member or company shall—
 - (i) be available to United Milk Products Ltd as security for the discharge of that obligation; and
 - (ii) where the security extends to a future obligation—be available as security for the discharge of an obligation incurred to United Milk Products Ltd on or after that day,

and United Milk Products Ltd shall, in relation to such a security, be entitled to all the rights and priorities and be subject to all the obligations to which that member or company would have been entitled or have been subject if this Act had not been passed.

(2) The amalgamation of the undertakings of the amalgamating companies shall not prejudice any right that a creditor has in relation to a debt owing to him from a member of the Nedco group or a declared company and the creditor shall be deemed to have the same right against United Milk Products Ltd.

Supplementary provisions with respect to legal proceedings, documents, &c.

7—Without limiting the effect of section 4, the following provisions have effect on and from the relevant day:—

- (a) legal proceedings instituted by or against a member of the Nedco group or a declared company before and pending at the relevant day may be continued by or, as the case may be, against United Milk Products Ltd;
- (b) legal proceedings by or against a member of the Nedco group or a declared company to enforce a right that had accrued before, and is in existence at, the relevant day may be commenced by or, as the case may be, against United Milk Products Ltd;
- (c) a judgment or order of a court obtained by or against a member of the Nedco group or a declared company may be enforced by or, as the case may be, against United Milk Products Ltd;
- (d) a document addressed to and purporting to be served on a member of the Nedco group or a declared company shall be deemed to be served on United Milk Products Ltd.

Transfer of employees of Nedco group, &c., to United Milk Products.

8—(1) On the relevant day, all employees of the Nedco group and of any declared company shall become employees of United Milk Products Ltd on the same terms and conditions as those on which they were employed immediately before that day by the member of the Nedco group or declared company by whom they were employed and with the rights and obligations accrued or accruing in respect of their employment with that member or company.

(2) A director, secretary, or auditor of a member of the Nedco group or of a declared company does not, by virtue of the passing of this Act, become a director, secretary, or auditor of United Milk Products Ltd.

9—(1) On or after the relevant day, United Milk Products Ltd may make an application in writing to the Recorder of Titles to be recorded in the register kept under the *Real Property Act 1862* as registered proprietor of any estate or interest in land under that Act which has become vested in United Milk Products Ltd by virtue of section 4.

Special provisions applicable to land under *Real Property Act 1862*, &c.

(2) On receipt of an application under subsection (1) together with such fee as would be payable on lodgment of an application for the purposes of section 61 of the *Real Property Act 1862*, the Recorder of Titles shall, if satisfied that the estate or interest to which the application relates has become vested in United Milk Products Ltd, make such entries in the register kept under that Act as may be necessary for the purpose of recording United Milk Products Ltd as registered proprietor of that estate or interest.

(3) Where on or after the relevant day any estate or interest in land to which the *Registration of Deeds Act 1935* applies forms part of the undertaking vested in United Milk Products Ltd by virtue of section 4, an instrument dealing with that estate or interest may, if it recites the circumstances of the vesting, is executed by United Milk Products Ltd, and is otherwise in registrable form, be registered by the Registrar of Deeds notwithstanding that no instrument formally vesting that estate or interest in United Milk Products Ltd has been registered under that Act.

10—Where, in relation to any financial year or part of a financial year of a member of the Nedco group or a declared company that fell before the dissolution of that member or company by virtue of section 4, any provision of section 13 or 14 of the *Co-operative Industrial Societies Act 1928* or, as the case may be, Division I or II of Part VI of the *Companies Act 1962* had not been complied with before the relevant day, that provision shall, in relation to that financial year or part of a financial year, apply to United Milk Products Ltd as if that member or company had not been dissolved and as if United Milk Products Ltd were that member or company.

Certain accounting provisions under the *Co-operative Industrial Societies Act 1928*, &c., to be complied with.

11—Where before the dissolution of a member of the Nedco group or a declared company by virtue of section 4—

- (a) that member or company did or omitted to do any act or thing that constituted an offence against the *Co-operative Industrial Societies Act 1928* or, as the case may be, the *Companies Act 1962* and a person is, in his capacity as an officer of that member or com-

Liability of persons for acts and omissions relating to members of Nedco group, &c.

pany, deemed by virtue of a provision of the Act under which that offence is constituted to have also committed an offence; or

- (b) a person, whether acting in the capacity of an officer of that member or company or not, did or omitted to do any act or thing that constituted an offence against either of those Acts in relation to the affairs of that member or company,

that person shall, if not already proceeded against before the relevant day, continue to be liable to be proceeded against for that offence notwithstanding the dissolution of that member or company, but this section shall be read subject to any enactment relating to the time within which any such proceedings may be taken.

Change of
name to
United Milk
Tasmania
Limited, &c.

12—(1) At any time during the period of 3 months commencing with the relevant day, United Milk Products Ltd may, by special resolution, change its name to “United Milk Tasmania Limited” or to such other name as may be approved by the Commissioner.

(2) Section 23 of the *Companies Act* 1962 shall be read subject to subsection (1).

(3) If after the relevant day United Milk Products Ltd changes its name, whether under subsection (1) or under section 23 of the *Companies Act* 1962, a reference in this Act (this section and sections 3 and 4 (1) excepted) or in any other Act to United Milk Products Ltd shall, after the resolution changing the name takes effect, be read as a reference to the name to which that company has changed.

Act to expire
in certain
circumstances.

13—Unless the resolutions required to be lodged under section 3 are all lodged within the period of 6 months after the passing of this Act, this Act shall expire at the end of that period.