

Reprint  
as at 1 August 2017



## Kiwifruit Export Regulations 1999 (SR 1999/310)

Michael Hardie Boys, Governor-General

### Order in Council

At Wellington this 20th day of September 1999

Present:

His Excellency the Governor-General in Council

Pursuant to Part 2 of the Kiwifruit Industry Restructuring Act 1999, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and on the recommendation of the Minister of Food, Fibre, Biosecurity and Border Control, makes the following regulations.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**These regulations are administered by the Ministry for Primary Industries.**

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**Schedule 1**

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**Application, savings, and transitional provisions relating to amendments made to these regulations after 1 January 2014****Schedule 2**

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**Provisions relating to Board****Regulations****1 Title and commencement**

- (1) These regulations may be cited as the Kiwifruit Export Regulations 1999.
- (2) Regulation 47 comes into force on the 28th day after the date of the notification of these regulations in the *Gazette*.
- (3) The rest of these regulations come into force on 1 April 2000.

**2 Interpretation**

In these regulations, unless the context otherwise requires,—

**Act** means the Kiwifruit Industry Restructuring Act 1999

**Board** means the board established under Part 5

**collaborative marketing approval** means an approval by the Board under regulation 28

**collaborative marketing arrangement** means an arrangement by which a person may export New Zealand grown kiwifruit in collaboration with ZGL

**core business**—

- (a) means the purchase of New Zealand-grown kiwifruit for export where the point of acquisition of title to fruit is at FOBS and the export of that fruit:
  - (i) the marketing of New Zealand-grown kiwifruit; and
  - (ii) market development for New Zealand-grown kiwifruit; and
  - (iii) research and development relating to kiwifruit:
- (b) excludes the export at FOBS of kiwifruit for consumption in Australia:

(c) excludes the sale of kiwifruit in New Zealand

**export authorisation** means the authorisation granted by the Board to ZGL

**export ban** means the restriction on exports (otherwise than for consumption in Australia) in regulation 3

**director** has the same meaning as in section 126 of the Companies Act 1993

**financial year** means a period of 12 months commencing on 1 April in any year and ending with 31 March in the following year

**FOBS** means stowed on board the ship or aircraft on which the kiwifruit is exported

**generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013

**Handbook** means the Kiwifruit Information Disclosure Handbook published under regulation 13

**information disclosure requirements** means the requirements in regulations 12 to 21

**justifiable discrimination** has the same meaning as in regulation 10

**manager**, in relation to a person,—

(a) means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person; and

(b) includes, for the avoidance of doubt, a director of that person

**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Act

**non-discrimination rule** means the rule in regulation 9

**non-diversification rule** means the rule in regulation 11

**prior notice rule** means the rule in regulation 10A

**producer** means any of the following:

(a) an owner of land in New Zealand on which kiwifruit is produced for supply to ZGL:

(b) a lessee under a lease of at least 1 year's duration of land in New Zealand on which kiwifruit is produced for supply to ZGL:

(c) a person determined by ZGL to be a producer for the purpose of tradeability of shares

**publicly disclose** means to make information available in the following ways:

(aa) by making that information available, free of charge, on an Internet site that is—

(i) maintained by or on behalf of ZGL or the Board (as the case may be); and

- (ii) publicly accessible at all reasonable times; and
- (a) by making copies of that information available for inspection, during ordinary office hours, at ZGL's or the Board's (as the case may be) principal office; and
- (b) at the request of any person, by posting a copy to the person or providing the person with a copy of that information for collection, during ordinary office hours, from ZGL's or the Board's (as the case may be) principal office

**qualified auditor** has the same meaning as in section 35 of the Financial Reporting Act 2013

**responsible chief executive**, in relation to any function or matter, means the chief executive for the time being of a responsible Ministry who has, with the authority of the Prime Minister, assumed responsibility for that function or matter

**season** means a period of 12 months commencing on 1 April in any year and ending with 31 March in the following year

**supplier** means a person from whom ZGL acquires the property in kiwifruit grown in New Zealand

**ZGL**,—

- (a) in regulations 22 to 23A, means the company incorporated under the Companies Act 1993 as at 1 April 2000 with the name Zespri Group Limited; and
- (b) in the rest of these regulations, means that company and its subsidiaries.

Regulation 2 **core business** paragraph (ab): inserted, on 1 August 2017, by regulation 4(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 2 **financial statements**: revoked, on 1 April 2014, by regulation 5(1) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 2 **generally accepted accounting practice**: inserted, on 1 April 2014, by regulation 5(3) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 2 **independent auditor**: revoked, on 1 April 2014, by regulation 5(2) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 2 **Ministry**: inserted, on 1 August 2017, by regulation 4(3) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 2 **prior notice rule**: inserted, on 1 August 2017, by regulation 4(3) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 2 **producer**: inserted, on 1 August 2017, by regulation 4(3) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 2 **publicly disclose** paragraph (aa): inserted, on 1 August 2017, by regulation 4(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 2 **qualified auditor**: inserted, on 1 April 2014, by regulation 5(3) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 2 **ZGL**: replaced, on 1 August 2017, by regulation 4(4) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## **2A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Regulation 2A: replaced, on 1 August 2017, by regulation 5 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## **Part 1**

### **Restrictions on export of kiwifruit**

#### **3 Export ban**

- (1) No person may export kiwifruit otherwise than for consumption in Australia except as authorised or approved by the Board in accordance with these regulations.
- (2) Every person commits an offence, and is liable on conviction to a fine not exceeding \$50,000, who knowingly and without lawful excuse contravenes subclause (1).

Regulation 3(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **Part 2**

### **ZGL's export authorisation**

#### **4 Board must authorise ZGL to export kiwifruit**

- (1) The Board must authorise ZGL to export kiwifruit.
- (2) The terms and conditions of the authorisation must be in accordance with regulations 5 to 7 and must be in writing.

#### **5 Requirements of authorisation**

The export authorisation must—

- (a) have no expiry date;
- (b) contain provisions to ensure that the Board will not incur any liabilities in respect of the export ban or anything done or omitted to be done by ZGL;
- (c) require the point of acquisition of title to kiwifruit purchased for export to be at FOBS (or, at ZGL's discretion, later in the supply chain than FOBS).

#### **6 Matters that must not be included in authorisation**

- (1) The export authorisation must not provide for any of the following:
  - (a) a limit on the percentage of the kiwifruit crop that is available to ZGL to export (other than via collaborative marketing):

- (b) a requirement that ZGL purchase any particular proportion of the kiwifruit crop:
  - (c) the basis on which ZGL is to purchase and pay for kiwifruit (other than in connection with the non-discrimination rule):
  - (d) an assertion of rights by the Board over any of ZGL's assets, including intellectual property:
  - (e) the Board to have any right or obligation to approve any transactions entered into by ZGL (other than in respect of collaborative marketing):
  - (f) the Board to have any rights or powers in respect of kiwifruit pool administration or control (other than in respect of collaborative marketing):
  - (g) the Board to have any right or power to receive any of ZGL's revenue or income whatsoever (except the fees referred to in regulation 7(1)(c)):
  - (h) any events on which the export authorisation is to terminate (except in the case of ZGL's insolvency):
  - (i) compensation for any person if the export ban is revoked:
  - (j) any matters other than those reasonably necessary for the effective implementation of the requirements in regulation 5 or the discretionary requirements in regulation 7:
  - (k) any variation of the provisions of Part 3.
- (2) **Insolvency** means—
- (a) the appointment of a receiver; or
  - (b) the appointment of a liquidator or interim liquidator under Part 16 of the Companies Act 1993; or
  - (c) the removal of ZGL from the register of companies kept pursuant to section 360(1)(a) of the Companies Act 1993; or
  - (d) the appointment of a statutory manager under Part 3 of the Corporations (Investigation and Management) Act 1989.

## 7 **Discretionary requirements of authorisation**

- (1) The export authorisation must—
- (a) provide for an enforcement regime to ensure reasonable compliance with the matters referred to in regulation 33(1)(b):
  - (b) provide for the Board to make determinations on, and administer, the exemptions in respect of the information disclosure requirements under regulation 21:
  - (c) provide for ZGL to pay to the Board—
    - (i) the reasonable costs incurred by the Board in administering ZGL's export authorisation, including monitoring and enforcement under regulation 33(1)(b); and



- (ii) the reasonable costs of the Board's communications with producers; and
  - (iii) the reasonable costs incurred by the Board in considering applications for collaborative marketing arrangements; but
  - (iv) no other fees:
  - (d) require ZGL to enter into collaborative marketing arrangements approved by the Board:
  - (e) provide for any other matters reasonably necessary for the effective implementation of the requirements in this regulation or regulation 5.
- (2) The enforcement regime must include provisions for—
- (a) the identification of enforcement events:
  - (b) procedures which comply with natural justice:
  - (c) remedies, including provisions enabling affected persons to initiate, by way of complaint to the Board, an action through the enforcement regime and to receive an appropriate remedy if their claim is made out.
- (3) The Board may decide, following consultation with ZGL, how these terms are specified in the authorisation.
- (4) However, the Board must—
- (a) submit to the Minister for approval, in sufficient time to enable the implementation of the first authorisation on 1 June 2000, the range of enforcement options to be included in the enforcement regime; and
  - (b) submit to the Minister for approval any proposed variation in that range of enforcement options; and
  - (c) comply with any request made by the Minister arising from the submission for approval.
- (5) This regulation is subject to regulation 6.

Regulation 7(1)(c)(ii): amended, on 1 August 2017, by regulation 6(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 7(1)(c)(iii): replaced, on 1 August 2017, by regulation 6(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 7(1)(c)(iv): inserted, on 1 August 2017, by regulation 6(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **Part 3**

#### **Mitigation measures**

#### **8 Purpose of Part**

The purpose of this Part is to mitigate the potential costs and risks arising from the monopsony, by—

- (a) encouraging innovation in the kiwifruit industry while managing risks associated with activities that are not the core business; and
- (b) promoting efficient pricing signals to shareholders and suppliers; and
- (c) providing appropriate protections for producers and ZGL's shareholders and suppliers; and
- (d) promoting sustained downward pressure on ZGL's costs.

Regulation 8(a): replaced, on 1 August 2017, by regulation 7(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 8(c): amended, on 1 August 2017, by regulation 7(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### *Non-discrimination rule*

#### **9 Duty not to discriminate unjustifiably**

ZGL, and its directors and managers, must not unjustifiably discriminate among suppliers and potential suppliers in respect of—

- (a) a decision on whether to purchase kiwifruit; or
- (b) the terms of the purchase contract.

#### **10 Justifiable discrimination**

- (1) Discrimination (or the extent of the discrimination) is justifiable if it is on commercial grounds.
- (2) A commercial ground includes, but is not limited to, matters relating to product features, quality, quantity, timing, location, risk, or potential returns.

### *Prior notice rule*

Heading: inserted, on 1 August 2017, by regulation 8 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **10A ZGL must inform Board before carrying out activities that support core business**

- (1) ZGL must inform the Board before carrying out any activities that are not the core business but do support the core business.
- (2) For the purposes of this regulation and regulation 11, an activity **supports the core business** if—
  - (a) the activity is likely to enhance the performance of the core business; and
  - (b) the activity poses no more than a low risk (if any) to the interests of producers.
- (3) A consideration of the nature of any risk under subclause (2)(b) must—
  - (a) first take into account any measures that ZGL has put in place to mitigate the effects of any risk event; and

- (b) then consider—
  - (i) the likelihood of a risk event occurring; and
  - (ii) the impact on the interests of producers if a risk event occurred.
- (4) In subclause (3), **risk event** means an event identified as a risk to the interests of producers that is posed by the activity.
- (5) In this regulation and regulation 11,—  
**activity** includes, without limitation, the ownership or operation of an asset  
**risk** means foreseeable risk.
- (6) This regulation and regulation 11 do not apply to—
  - (a) sales of New Zealand-grown kiwifruit in New Zealand where the level of sales is incidental to the size of the total New Zealand market provided that the incidental sales are not more than 300 000 trays of kiwifruit sold by ZGL in the New Zealand market; and
  - (b) sales of New Zealand-grown kiwifruit in Australia.

Regulation 10A: inserted, on 1 August 2017, by regulation 8 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### *Non-diversification rule*

### **11 Non-diversification rule**

- (1) ZGL must not carry out any activities that are not the core business and do not support the core business unless—
  - (a) ZGL has carried out a process in which all producers have been—
    - (i) informed of the proposed activities; and
    - (ii) asked to agree by vote to ZGL carrying out the proposed activities; and
  - (b) the following results were obtained from the process:
    - (i) at least 75% of the producers voting on the question agree; and
    - (ii) the production of the producers (who agreed in the voting) was, on average, at least 75% of the kiwifruit supplied to ZGL over the previous 2 consecutive seasons by all producers who voted on the question; and
  - (c) ZGL has minimised, as far as is reasonably practicable, the risks (arising from carrying out the proposed activities) for the producers who have not agreed (whether or not those producers voted).
- (2) For the purposes of the voting referred to in subclause (1)(a)(ii), each producer is entitled to 1 vote per producer entity (for example, a partnership with 10 partners is entitled to 1 vote).
- (3) For the purposes of subclause (1)(b)(ii), the production of producers who voted must be calculated in accordance with the following:

- (a) kiwifruit that is produced is calculated in kilograms:
  - (b) each kilogram of kiwifruit is only counted once:
  - (c) if the land on which the kiwifruit is produced is under a lease of at least 1 year's duration, the kiwifruit produced on that land is counted as being from the producer who owns the land unless, before the voting under subclause (1), the producer allocates the production to the lessee.
- (4) *See* regulation 10A.
- Regulation 11: replaced, on 1 August 2017, by regulation 9 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### *Information disclosure*

#### **12 Financial statement disclosure**

- (1) Within 4 months after the end of each financial year (beginning with the 2000/01 financial year), ZGL must publicly disclose financial statements for that financial year in respect of each of the business activities defined in the Handbook.
- (2) Those financial statements must—
  - (a) be prepared in accordance with generally accepted accounting practice and the allocation methodology in the Handbook; and
  - (b) disclose the information specified in the Handbook.

Regulation 12(2)(a): amended, on 1 April 2014, by regulation 6 of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

#### **13 Kiwifruit Information Disclosure Handbook**

The responsible chief executive may from time to time publish a Handbook which may provide for all or any of the following:

- (a) the definition of ZGL's business activities:
- (b) the allocation methodology that must be used for preparing the financial statements and allocating the expenses, revenues, assets, and liabilities amongst ZGL's business activities:
- (c) the disclosure of the manner in which the allocation methodology has been applied:
- (d) the information that must be specified in the financial statements disclosed under regulation 12:
- (e) the disclosure of transfer payments (whether actual or notional) amongst the business activities:
- (f) the disclosure of financial performance measures, or information from which financial performance measures may be derived, or both:
- (g) the form of the disclosures (including requirements as to separate, consolidated, and reconciliation information):

- (h) the audit and certification of disclosed information:
- (i) the retention of data on which disclosed information is based and associated documentation.

#### **14 Disclosure of kiwifruit purchase conditions**

- (1) ZGL must publicly disclose, 1 month before coming into effect,—
  - (a) its terms and conditions, and any amendments to those terms and conditions, for the purchase of kiwifruit grown in New Zealand; and
  - (b) the period for which each set of terms and conditions, including amendments, is applicable.
- (2) If it is not practicable to make the disclosure under subclause (1) 1 month before coming into effect, ZGL must make that disclosure as soon as practicable and no later than the date of coming into effect.
- (3) ZGL must publicly disclose, within 3 months after the end of each financial year (beginning with the 2000/01 financial year),—
  - (a) the number of suppliers to which each set of terms and conditions were applied; and
  - (b) the volume of kiwifruit to which each set of terms and conditions were applied.
- (4) ZGL must publicly disclose,—
  - (a) within 3 months after the beginning of each financial year, the methodology used at the beginning of that financial year to determine the payments for kiwifruit; and
  - (b) any change in the methodology, or adoption of a different methodology, within 1 month of the change or the different methodology taking effect.
- (5) Every disclosure under subclause (4) must include key details of the methodology including—
  - (a) the relationship between purchase prices and selling prices; and
  - (b) the key costs (including cost of capital incurred by ZGL) and other factors that explain the differences between purchase prices (paid to suppliers) and selling prices; and
  - (c) any other information on which ZGL is relying to justify discrimination amongst suppliers.

#### **15 Disclosure relating to collaborative marketing**

Within 3 months after the end of each season (beginning with the 2000/01 season), the Board must publicly disclose for that season—

- (a) the identity of each person approved by the Board to be a collaborative marketing approval holder; and

- (b) the volume of kiwifruit marketed by each collaborative marketing approval holder; and
- (c) financial information to enable an assessment to be made as to whether the net returns to suppliers in respect of each collaborative marketing arrangement were greater than would have been the case if the collaborative marketing arrangement had not been approved, including the methodology used by ZGL to allocate costs to the collaborative marketing approval holder.

*Miscellaneous provisions relating to information disclosure*

**16 No charge for supplying information**

ZGL and the Board must not charge for supplying any information required to be publicly disclosed under this Part.

**17 Period of disclosure**

- (1) ZGL must comply with the following rules:
  - (a) information that is publicly disclosed must be publicly disclosed for a period of at least 4 years:
  - (b) information relating to any terms and conditions under regulation 14 that is publicly disclosed must be publicly disclosed for a period of at least 4 years or until the terms and conditions are no longer applied, whichever is the longer.
- (2) A period runs from the time the information is first required to be publicly disclosed in accordance with these regulations.

**18 Information required to be certified by auditor**

- (1) A qualified auditor must provide a signed auditor's report with respect to the financial statements required by regulation 12 to be publicly disclosed.
- (2) If, in the auditor's opinion, the financial statements fail to comply with these regulations or generally accepted accounting practice, the auditor must—
  - (a) give a qualified audit report; and
  - (b) explain in the qualified audit report the respects in which the statements fail to comply.
- (3) A qualified auditor must certify the financial performance measures specified in the Handbook in accordance with regulation 13(f).

Regulation 18(1): amended, on 1 April 2014, by regulation 7(1) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 18(2): replaced, on 1 April 2014, by regulation 7(2) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Regulation 18(3): amended, on 1 April 2014, by regulation 7(3) of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

## **19 Time limit for responding to requests for information**

A person required by a provision of these regulations to publicly disclose any information must provide a copy of the disclosed information within 2 weeks of receiving a request to provide any other person with a copy of that disclosed information.

## **20 Information to be supplied to Board**

- (1) ZGL must supply to the Board—
  - (a) a copy of all statements and information required to be publicly disclosed under this Part within 1 week after the statements and information are first required to be made so available:
  - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the Board for the purpose of monitoring ZGL's compliance with these regulations.
- (2) ZGL, on receipt of a request made under subclause (1)(b), must comply with that request within 1 month after receiving the request or within such further period as the Board in any particular case may allow.
- (3) All statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(a) must be certified by a director of ZGL as a true copy of the information that has been publicly disclosed by ZGL.
- (4) All statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(b) must be accompanied by a certificate from a director of ZGL that—
  - (a) declares that the statements, reports, agreements, particulars, and information are the statements, reports, agreements, particulars, and information requested by the Board; and
  - (b) to the best of the director's knowledge, contain all the statements, reports, agreements, particulars, and information in the possession of ZGL which relate to the request.

## **21 Exemptions**

- (1) The Board may exempt ZGL from a provision of the information disclosure requirements if satisfied that granting the exemption would not significantly prejudice the effective scrutiny of ZGL's performance.
- (2) The Board may allow ZGL to disclose information in confidence to the Board (instead of being publicly disclosed) if satisfied that to publicly disclose the information would be likely to prejudice unreasonably the commercial position of ZGL.

*Corporate form***22 Requirements as to ZGL's corporate form**

- (1) ZGL—
  - (a) must remain a company registered only under the Companies Act 1993:
  - (b) must not have voting shares other than ones that are fully tradeable (not based on any supply criteria) at least among producers.
- (2) ZGL may determine that a person who is not a producer within the meaning of paragraph (a) or (b) of the definition of producer in regulation 2 is a producer for the purpose of tradeability of shares.
- (3) ZGL's constitution may not be altered to include rules about maximum shareholding unless—
  - (a) the rules are based on the amount of kiwifruit supplied to ZGL; and
  - (b) the rules apply only to producers.
- (4) To avoid doubt, any rules about maximum shareholding permitted by subclause (3) may relate to holding or acquiring shares.
- (5) This regulation does not prevent ZGL from having shares with voting rights based on supply criteria under regulation 23(1)(a).

Regulation 22: replaced, on 1 August 2017, by regulation 10 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

*Protections for shareholders***23 Contents of constitution**

- (1) Section 36(2) of the Companies Act 1993 applies to the shares issued under the share allocation plan provided for in the Act as follows:
  - (a) the rights in section 36(1)(a) of the Companies Act 1993 may be negated or altered by ZGL's constitution only for the purpose of limiting shareholder's voting rights based on supply of kiwifruit to ZGL:
  - (b) the rights in section 36(1)(b) of the Companies Act 1993 may be negated or altered by ZGL's constitution only to the extent that they apply to shareholders who are not producers:
  - (c) the rights in section 36(1)(c) of the Companies Act 1993 may not be negated or altered by ZGL's constitution.
- (2) Section 131(1) of the Companies Act 1993 applies to the directors of ZGL Limited and, for the purposes of section 131(4), ZGL Limited is not a joint venture company.
- (3) Section 76(1)(c) of the Companies Act 1993 does not apply.
- (4) All directors of ZGL Limited must be elected according to the procedure set down in section 155(1)(a) of the Companies Act 1993.



- (5) Subclause (4) does not prevent an appointment to fill a casual vacancy pending the next election of directors by shareholders.

Regulation 23(1): substituted, on 11 May 2000, by regulation 5 of the Kiwifruit Export Amendment Regulations (No 2) 2000 (SR 2000/56).

Regulation 23(1)(a): replaced, on 1 August 2017, by regulation 11 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 23(1)(b): replaced, on 1 August 2017, by regulation 11 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 23(1)(c): inserted, on 1 August 2017, by regulation 11 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### *Resolutions for certain alterations*

Heading: inserted, on 1 August 2017, by regulation 12 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## **23A Additional resolution procedure required for certain alterations to constitution**

- (1) An alteration permitted by regulation 22(3) or 23(1)(b) must not be made to ZGL's constitution unless the requirements of this regulation are complied with in addition to the requirements of the Companies Act 1993.
- (2) The proposed alteration must be the subject of a resolution procedure in which—
- (a) all shareholders are entitled to vote on the question; and
  - (b) each share entitles the shareholder to 1 vote on the question.
- (3) Before the resolution procedure is carried out, ZGL must have in place arrangements that give a shareholder who is entitled to vote under subclause (2) the same entitlement as that conferred on a shareholder by section 118 of the Companies Act 1993.
- (4) The proposed alteration must—
- (a) be approved, as if it were an alteration to which section 32 of the Companies Act 1993 applied, by a resolution of a majority of 75% of the votes of all shareholders who are entitled to vote under subclause (2) and are voting on the question; and
  - (b) be approved, as if it were an alteration to which section 117 of the Companies Act 1993 applied, by a resolution of each interest group that is passed by a majority of 75% of the votes of all shareholders in the interest group who are entitled to vote under subclause (2) and are voting on the question.

Regulation 23A: inserted, on 1 August 2017, by regulation 12 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## Part 4

### Collaborative marketing

#### 24 Purpose of Part

The purpose of this Part is to enable the Board to require ZGL to enter into collaborative marketing arrangements for the purpose of increasing the overall wealth of New Zealand kiwifruit producers.

Regulation 24: amended, on 1 August 2017, by regulation 13 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### 25 Exercise of Board's powers and functions

The powers and functions of the Board under this Part are to be exercised in a manner that seeks to best achieve the purpose in regulation 24.

##### *Allocation of part of kiwifruit crop for collaborative marketing*

#### 26 Allocation power

- (1) The Board may, no later than 1 month after the commencement of each kiwifruit season, direct ZGL to make a certain volume of kiwifruit available for collaborative marketing arrangements in that current season.
- (2) That volume may be set either as a percentage by volume or an amount by volume based on the New Zealand-grown kiwifruit that ZGL purchased in the previous season, or has purchased so far in the current season, or will purchase in the current season.

##### *Collaborative marketing approvals*

#### 27 Applicants

Any person may apply to the Board for a collaborative marketing approval.

#### 28 Board decision

- (1) As soon as practicable after receiving an application, the Board must consider it and decide whether to approve a collaborative marketing arrangement.
- (2) The Board—
  - (a) may before deciding whether to approve the application indicate to the applicant possible changes to the application which, if included, would improve the prospects of the application being approved; and
  - (b) may, in approving an application, impose any reasonable and necessary conditions; and
  - (c) must, after deciding an application—
    - (i) as soon as practicable, give written notice to the applicant of its decision, including the reasons for its decision in any case where it declines the application; and

- (ii) if the application has been approved, issue the collaborative marketing approval to the applicant.
- (3) Subclause (1) does not apply if collaborative marketing approvals have already been granted in respect of the volume of kiwifruit set in regulation 26.

### **29 Effect of Board decision**

ZGL must enter into a contract with the collaborative marketing approval holder consistent with the collaborative marketing approval.

#### *Other matters*

### **30 ZGL's other contractual arrangements**

Subject to any allocation under regulation 26, nothing in this Part affects or limits the ability of ZGL to enter into any contract or arrangement for the purchase and marketing of kiwifruit.

### **31 Board's procedures and processes**

Subject to any requirements in this Part, the Board may regulate its own procedure in a way that is consistent with the rules of natural justice.

## **Part 5**

### **Establishment of New Zealand Kiwifruit Board**

#### **32 New Zealand Kiwifruit Board**

- (1) The New Zealand Kiwifruit Board (known as "Kiwifruit New Zealand") is established.
- (2) The Board is a body corporate with perpetual succession and a common seal.
- (3) The Board is not a Crown entity for the purposes of the section 7 of the Crown Entities Act 2004.

Regulation 32(3): amended, on 25 January 2005, by section 37(1) of the Public Finance Amendment Act 2004 (2004 No 113).

#### **33 Functions**

- (1) The functions of the Board are—
  - (a) to authorise the export of kiwifruit at FOBS, and to set the terms of the authorisation in accordance with Parts 1 and 2:
  - (b) to monitor and enforce—
    - (i) the non-discrimination rule, the prior notice rule, the non-diversification rule, the information disclosure requirements, and the collaborative marketing requirements; and
    - (ii) the requirement that the point of acquisition of title to kiwifruit purchased for export be in accordance with regulation 5(c); and

- (iii) any other terms and conditions of the authorisation:
  - (c) to determine collaborative marketing applications in accordance with Part 4:
  - (d) to act in accordance with its statement of intent.
- (2) The Board must carry out its function under subclause (1)(b) to best achieve the purpose in regulation 8.

Regulation 33(1)(b)(i): amended, on 1 August 2017, by regulation 14(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 33(1)(d): inserted, on 1 August 2017, by regulation 14(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### 33A Statements of intent

- (1) The Board must, once in every 3-year period, prepare a statement of intent for the Board that relates to the next 3-year period.
- (2) The statement of intent must be prepared in accordance with this regulation and regulation 33B.
- (3) The statement of intent must, for the 3-year period to which it relates,—
- (a) set out the objectives that the Board intends to achieve or contribute to; and
  - (b) explain the nature and scope of the Board's functions and intended operations; and
  - (c) explain how the Board intends to manage its functions and operations to meet its objectives; and
  - (d) explain how the Board proposes to manage its organisational health and capability; and
  - (e) explain how the Board intends to assess its performance; and
  - (f) set out and explain any other matters that are reasonably necessary to achieve an understanding of the Board's intentions and capability.
- (4) The Board may include in the statement of intent information that is not required by subclause (3) so long as the information can be identified separately.
- (5) A statement of intent is in force—
- (a) from the first day of the first financial year to which it relates; and
  - (b) until the close of the final day of the last financial year to which it relates.
- (6) In this regulation and regulation 33B, **3-year period** means 3 consecutive financial years.
- (7) The first statement of intent must relate to the period set out in clause 7 of Schedule 1.

Regulation 33A: inserted, on 1 August 2017, by regulation 15 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **33B Preparation of statement of intent**

- (1) On or before 1 February of the last financial year to which the current statement of intent relates, the Board must provide a draft of the statement of intent for the next 3-year period to the Minister for comment.
- (2) The Board must—
  - (a) provide, in accordance with subclause (3), the final statement of intent to the Minister before the commencement of the first financial year to which it relates; and
  - (b) publicly disclose the statement of intent (as soon as practicable after providing the statement of intent to the Minister).
- (3) The statement of intent must be in writing and be dated and signed on behalf of the Board by at least 2 members of the Board.
- (4) The first statement of intent must comply with clause 7 of Schedule 1.

Regulation 33B: inserted, on 1 August 2017, by regulation 15 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **33C Amendments to statement of intent**

- (1) The Board must amend the statement of intent as soon as practicable after the Board becomes aware that—
  - (a) the statement of intent contains information that is false or misleading in a material particular; or
  - (b) the intentions and undertakings of the statement of intent are significantly altered by any change to the law or to the Board's operating environment.
- (2) The Board must provide a draft of any amendment to the statement of intent to the Minister for comment, and prepare and publicly disclose the final amendment, in accordance with regulation 33B(2) and (3) (applied with any necessary modifications).
- (3) An amendment to the statement of intent is in force—
  - (a) on the date that the final amendment is provided to the Minister; and
  - (b) until the close of the final day of the last financial year to which the original statement of intent relates.

Regulation 33C: inserted, on 1 August 2017, by regulation 15 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **34 Cost-effective requirement**

*[Revoked]*

Regulation 34: revoked, on 1 August 2017, by regulation 16 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

**35 Prohibitions**

The Board must not—

- (a) carry on any commercial activity, including the purchase or sale of kiwifruit:
- (b) operate to make a profit.

**36 Appointment of Board members**

- (1) The Board consists of 6 members of which—
  - (a) 3 members are to be elected by producers in accordance with regulation 37; and
  - (b) 2 members are to be appointed by the Minister in accordance with subclause (2); and
  - (c) 1 member is to be appointed as chairperson by the Minister in accordance with subclause (3).
- (2) An appointment under subclause (1)(b) must be made in the following manner:
  - (a) the Board must identify the skills, knowledge, and experience that a member must have;
  - (b) the chief executive of the Ministry must compile a list of people who are fully independent of the kiwifruit industry and suitable for appointment as members;
  - (c) the chief executive of the Ministry must act under paragraph (b)—
    - (i) in consultation with the chairperson; and
    - (ii) after taking into account the matters identified under paragraph (a):
  - (d) the Minister must appoint the members from the list.
- (3) An appointment under subclause (1)(c) must be made in the following manner:
  - (a) the chief executive of the Ministry must compile, in consultation with the Board, a list of people who are fully independent of the kiwifruit industry and suitable for appointment as chairperson; and
  - (b) the Minister must appoint the chairperson from the list.
- (4) If the chairperson and 1 or more members are being considered for appointment at the same time, the chairperson must be appointed first.

Regulation 36: replaced, on 1 August 2017, by regulation 17 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

**36A Vacation of and removal from office**

- (1) A person vacates office as a member of the Board if the person is, or becomes, a director of ZGL.
- (2) The Minister may, at any time for just cause, remove a member of the Board.

- (3) The removal must be made by written notice to the member (with a copy provided to the Board).
- (4) The notice must—
  - (a) state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received; and
  - (b) state the reasons for the removal.
- (5) In this regulation, **just cause** includes misconduct, inability to perform the functions of office, or neglect of duty.

Regulation 36A: inserted, on 1 August 2017, by regulation 17 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **37 Election of producer representatives**

- (1) The producers who are eligible to vote in an election under regulation 36(1)(a) are—
  - (a) the owners of land in New Zealand on which kiwifruit is produced for export sale; or
  - (b) such other persons determined by the Board to be producers of such kiwifruit.
- (2) The decision as to who is a producer in respect of any particular kiwifruit orchard (whether an owner of land referred to in subclause (1)(a) or any other person referred to in subclause (1)(b)) is for the Board to make.
- (3) The Board, in exercising that discretion, may have regard to—
  - (a) whether the orchard was developed by a lessee of the land; or
  - (b) whether the landowner or lessee who would otherwise be the producer consents to another person being the producer, in a case where the other person—
    - (i) has a family association with the landowner or lessee; and
    - (ii) is engaged in the production of kiwifruit on that land.
- (4) The Board may determine the way in which the election of the members who are to be elected by producers is to be conducted.
- (5) The Board must, however, ensure that the election is held in a way that ensures fairness and that a clear and accurate result can be ascertained and verified.

Regulation 37(1): amended, on 1 August 2017, by regulation 18 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

### **38 Powers**

The Board has all the powers necessary to enable it to carry out its functions.

### **39 Funding**

- (1) The Board is to be funded on a cost recovery basis by charging—

- (a) ZGL, in accordance with the export authorisation, for the costs incurred by the Board in administering that authorisation, including monitoring and enforcement under regulation 33(1)(b); and
  - (b) ZGL and the applicants under the collaborative marketing regime; and
  - (c) ZGL and the applicants for the reasonable costs of the Board's communications with producers.
- (2) Any costs so charged are recoverable as a debt due to the Board in any court of competent jurisdiction.
- (3) When deciding the kind and level of charges to impose under this regulation, the Board must take the following principles into account, as far as is reasonably practicable:
  - (a) equity, in that funding for a particular function, power, or service, or a particular class of function, power, or service, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant functions, powers, or services at a level commensurate with their use or benefit from the function, power, or service;
  - (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost;
  - (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service;
  - (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.
- (4) At the same time that the Board publicly discloses the final statement of intent under regulation 33B(2), the Board must publicly disclose a statement of how funding has been achieved under this regulation. The statement—
  - (a) must set out the funding methods or structures that the Board has applied in the last 3-year period; and
  - (b) explain how the Board decided the kind and level of charges to impose in that period; and
  - (c) may include any other information that the Board considers relevant.
- (5) In subclause (4), **last 3-year period** means the 3 consecutive financial years immediately before the first financial year to which the final statement of intent relates.
- (6) The first statement under subclause (4) must relate to the period set out in clause 8 of Schedule 1.

Regulation 39(1)(b): amended, on 1 August 2017, by regulation 19(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 39(3): inserted, on 1 August 2017, by regulation 19(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).



Regulation 39(4): inserted, on 1 August 2017, by regulation 19(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 39(5): inserted, on 1 August 2017, by regulation 19(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Regulation 39(6): inserted, on 1 August 2017, by regulation 19(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **40 Financial statements must be prepared, audited, and publicly disclosed**

- (1) The Board must ensure that, within 3 months after the end of the financial year,—
  - (a) financial statements that comply with generally accepted accounting practice are—
    - (i) completed in relation to the Board and that financial year; and
    - (ii) dated and signed on behalf of the Board by 2 members of the Board; and
  - (b) the financial statements are audited by a qualified auditor; and
  - (c) the financial statements and the auditor's report are publicly disclosed.
- (2) In this regulation, **financial statements** has the same meaning as in section 6 of the Financial Reporting Act 2013.

Regulation 40: replaced, on 1 August 2017, by regulation 20 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **40A Board must provide certain information to Ministry**

- (1) The Board must provide to the Ministry, within 3 months after the end of each financial year,—
  - (a) a copy of its most recent audited financial statements and a copy of the auditor's report; and
  - (b) the information required to be publicly disclosed under regulation 15; and
  - (c) a document that compares the performance indicators in the Board's statement of intent with the actual performance information for the financial year.
- (2) In this regulation, **performance indicators** means the information required under regulation 33A(3)(e).

Regulation 40A: inserted, on 1 August 2017, by regulation 20 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **41 Further provisions applying to Board**

The provisions set out in Schedule 2 apply to the Board.

Regulation 41: amended, on 1 April 2014, by regulation 8 of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

## **Part 6**

### **Miscellaneous provisions**

#### **42 Alteration or review of authorisation**

- (1) The Board may alter the authorisation if it is necessary or desirable to do so to ensure the effective enforcement of the authorisation.
- (2) The Board must review the effectiveness of the enforcement regime set out in regulation 7(1)(a) at intervals of no more than 3 years apart and change the authorisation as necessary to ensure the effectiveness of the regime.
- (3) If these regulations are amended in a way that necessitates a change to the export authorisation, the Board must change the authorisation to ensure consistency with the regulations as amended.

#### **43 No contracting out**

These regulations apply despite anything to the contrary in the constitution of ZGL or its subsidiaries.

#### **44 No Crown liability**

- (1) The Crown is not liable to ZGL or any other person—
  - (a) in the event that an export authorisation or collaborative marketing arrangement is revoked:
  - (b) for any act or omission relating to the export authorisation or the operation of ZGL or of any other person approved under a collaborative marketing arrangement.
- (2) The Crown is not liable in respect of any act or omission by the Board.

#### **45 Notice of international obligations**

- (1) The Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade may, at any time, give to ZGL a written notice specifying—
  - (a) a particular international obligation of New Zealand; and
  - (b) an element of the performance of ZGL's functions or the exercise of ZGL's powers to which, in the Minister's opinion, the obligation is relevant.
- (2) ZGL must ensure that its performance or exercise of the element is consistent with the obligation until the notice is revoked.

#### **46 Supply of information**

- (1) The Board may from time to time, for the purpose of the administration and enforcement of these regulations, require ZGL to make available to the Board information in its possession or over which it has control.

- (2) ZGL must make that information available promptly to the Board in a form in which it can be readily understood.
- (3) This regulation is not limited by regulation 20(1)(b).

*Transitional provisions*

*[Revoked]*

Heading: revoked, on 1 August 2017, pursuant to regulation 21 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

**47 Transitional provisions relating to Board**

*[Revoked]*

Regulation 47: revoked, on 1 August 2017, by regulation 21 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

**48 ZGL's authorisation in 2-month interim period**

*[Revoked]*

Regulation 48: revoked, on 1 August 2017, by regulation 21 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

**49 Application, savings, and transitional provisions relating to amendments made to these regulations after 1 January 2014**

*[Revoked]*

Regulation 49: revoked, on 1 August 2017, by regulation 21 of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## Schedule 1

### Application, savings, and transitional provisions relating to amendments made to these regulations after 1 January 2014

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Schedule 1: inserted, on 1 April 2014, by regulation 10 of the Kiwifruit Export Amendment Regulations 2014 (LI 2014/46).

Schedule 1 heading: amended, on 1 August 2017, by regulation 22(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### Part 1

### Provisions relating to Kiwifruit Export Amendment Regulations 2014

Schedule 1 Part 1 heading: inserted, on 1 August 2017, by regulation 22(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### *Provisions relating to Kiwifruit Export Amendment Regulations 2014*

*[Revoked]*

Heading: revoked, on 1 August 2017, by regulation 22(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### 1 Interpretation

In clause 2, **amendment regulations** means the Kiwifruit Export Amendment Regulations 2014.

#### 2 Transitional provision

- (1) These regulations, as amended by regulations 5 to 8 of the amendment regulations, apply in relation to financial years that commence on or after 1 April 2014.
- (2) These regulations, as in force before 1 April 2014, continue to apply in relation to financial years that commence before that date as if the amendment regulations had not been made.

#### Part 2

### Provisions relating to Kiwifruit Export Amendment Regulations 2017

Schedule 1 Part 2: inserted, on 1 August 2017, by regulation 22(3) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### 3 Interpretation

In clauses 4 to 11, **amendment regulations** means the Kiwifruit Export Amendment Regulations 2017.

#### 4 Transitional and saving provision relating to core business activities

- (1) This clause applies to any activity that ZGL—
  - (a) was permitted to carry out under regulations 2 and 11 before those regulations were amended by the amendment regulations; and
  - (b) had been carrying out before 1 April 2017.
- (2) ZGL may, until 1 April 2019, continue to carry out any activity to which this clause applies despite regulation 11 and the definition of core business in regulation 2.
- (3) However, regulation 10A applies in respect of any activity that ZGL is permitted to continue to carry out under subclause (2) (despite ZGL having carried out that activity before 1 April 2017).
- (4) If ZGL decides to expand the scope of any activity that it is permitted to continue carry out under subclause (2), regulation 11 and the definition of core business in regulation 2 apply to the expanded activity.
- (5) This clause does not apply to an activity if—
  - (a) ZGL relies on clause 5 (instead of this clause) to continue to carry out the activity; and
  - (b) ZGL complies with clause 6 in relation to the activity.
- (6) In this clause and clause 5, an **activity** includes, without limitation, the ownership or operation of an asset.

#### 5 Transitional provision relating to existing contracts and assets

- (1) This clause applies to—
  - (a) a contract (the **contract**) that was entered into before 1 April 2017 that is still in force immediately before the commencement of the amendment regulations;
  - (b) an asset (the **asset**) that is owned or operated by ZGL immediately before 1 April 2017.
- (2) Despite regulation 11, ZGL may continue to carry out activities that consist of—
  - (a) performing the contract or receiving the benefit of the contract;
  - (b) owning or operating the asset.
- (3) Regulation 10A does not apply to the activities that ZGL is permitted to continue to carry out under subclause (2).
- (4) This clause—
  - (a) ceases to apply to the contract at the end of its current term (and this clause does not apply to any new or extended term of the contract);
  - (b) does not apply to any variation of the contract that is entered into after the commencement of the amendment regulations;

- (c) ceases to apply to an asset that is owned by ZGL if the asset is sold to any other person (in whole or in part).

## **6 ZGL must provide information about existing contracts and assets**

- (1) If ZGL intends to rely on clause 5 in relation to an existing contract or asset, ZGL must provide information to the Board that is sufficient to—
  - (a) clearly identify that contract or asset; and
  - (b) enable the Board to monitor ZGL's compliance with regulations 10A and 11.
- (2) Clause 5 ceases to apply to a contract or an asset if the information is not provided to the Board on or before 1 February 2018.

## **7 Transitional provisions relating to statements of intent**

The first statement of intent required by regulation 33A must,—

- (a) despite regulation 33A, relate to the period commencing on 1 October 2017 and ending on 31 March 2020; and
- (b) despite regulation 33B, be provided in draft to the Minister by 1 September 2017; and
- (c) despite regulation 33B, be provided in its final form to the Minister by 1 October 2017.

## **8 Transitional provision relating to funding and cost-recovery**

The first statement required to be publicly disclosed by regulation 39(4) must, despite regulation 39(5), relate to the period commencing on 1 October 2017 and ending on 31 March 2020.

## **9 Transitional provisions relating to financial statements**

- (1) These regulations, as amended by regulation 20 of the amendment regulations, apply in relation to the financial years that commence on or after the commencement of that regulation.
- (2) Despite regulation 40A(1)(c), the first document that the Board is required to provide under that paragraph must compare the performance indicators in the Board's statement of intent with the actual performance information for the period commencing on 1 October 2017 and ending on 31 March 2018.

## **10 Transitional and savings provisions relating to membership of Board**

- (1) The Minister must appoint the sixth member of the Board as soon as practicable after the commencement of the amendment regulations.
- (2) Despite regulation 36, a current Board member continues to hold office until the expiry of his or her term.
- (3) However, subclause (2) is subject to regulation 36A.

- (4) When a current Board member's term of office expires or the member otherwise vacates, or is removed from, office, the member must be replaced in the following manner:
- (a) a member who was elected by producers must be replaced in accordance with regulation 37:
  - (b) a member who was appointed by New Zealand Kiwifruit Growers Incorporated or its successor must be replaced by a member appointed by the Minister in accordance with regulation 36(2):
  - (c) the chairperson must be replaced in accordance with regulation 36(3).
- (5) In this clause, **current Board member** means a person whose term as a Board member commenced before the commencement of the amendment regulations and expires—
- (a) within 2 months before that commencement; or
  - (b) after that commencement.

#### **11 Transitional provisions relating to quorum of Board**

- (1) Clause 5(4) and (6) of Schedule 2 applies only after the sixth member of the Board is appointed.
- (2) Until the sixth member of the Board is appointed, clause 5(4) and (6) of Schedule 2, as it was before the amendment regulations came into force, applies.

## Schedule 2

### Provisions relating to Board

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#### **1 Term of office**

- (1) Every appointed member of the Board is appointed for a term of up to 3 years.
- (2) Every member of the Board elected by producers is elected for a term of up to 3 years.
- (3) This clause is subject to clause 3.

#### **2 Reappointment of Board members**

A member of the Board—

- (a) is eligible for reappointment or re-election; but
- (b) ceases to be eligible after holding office for 3 terms, whether consecutively or not.

Schedule 2 clause 2: replaced, on 1 August 2017, by regulation 23(1) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **3 Continuation in office after appointed member's term expires**

- (1) On expiry of an appointed Board member's first or second term of office, the member continues to hold office, by virtue of the appointment for the term that has expired, until—
  - (a) the member is reappointed; or
  - (b) a successor to the member is appointed.
- (2) A member ceases to hold office on the expiry of the member's third term of office.

Schedule 2 clause 3(1): amended, on 1 August 2017, by regulation 23(2) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Schedule 2 clause 3(2): inserted, on 1 August 2017, by regulation 23(3) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

#### **4 Vacancies**

The powers of the Board are not affected by any vacancy in its membership.

#### **4A No compensation for loss of office**

A member of the Board is not entitled to any compensation or other payment or benefit on ceasing, for any reason, to hold office as a member.

Schedule 2 clause 4A: inserted, on 1 August 2017, by regulation 23(4) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).



## **5 Meetings**

- (1) Meetings of the Board must be held at such times and places as the Board or its chairperson from time to time appoints.
- (2) The chairperson, or any 2 members, may at any time call a special meeting by giving not less than 7 days' notice of the special meeting, and of the business to be transacted at that meeting, to each member of the Board for the time being in New Zealand.
- (3) No business other than that specified in a notice of special meeting may be transacted at that meeting.
- (4) The quorum at any meeting of the Board is 4 members.
- (5) All questions arising at any meeting of the Board must be decided by a majority of the valid votes recorded on the question.
- (6) A resolution signed, or assented to by letter, facsimile transmission, telex, or other method of communication, by no fewer than 4 members has the same effect as a resolution duly passed at a meeting of the Board.
- (7) Subject to the provisions of these regulations, the Board may regulate its own procedure.
- (8) Subclauses (4) and (6) are subject to clause 11 of Schedule 1.

Schedule 2 clause 5(4): amended, on 1 August 2017, by regulation 23(5) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Schedule 2 clause 5(6): amended, on 1 August 2017, by regulation 23(6) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

Schedule 2 clause 5(7): amended, on 3 March 2000, by regulation 4 of the Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

Schedule 2 clause 5(8): inserted, on 1 August 2017, by regulation 23(7) of the Kiwifruit Export Amendment Regulations 2017 (LI 2017/159).

## **6 Chairperson**

- (1) The chairperson must preside at all Board meetings at which he or she is present.
- (2) If the chairperson is absent, the deputy chairperson must preside.
- (3) If the chairperson and the deputy chairperson are absent, the members present must appoint one of their number to be chairperson of that meeting.
- (4) At a Board meeting, the chairperson or other person presiding has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

## **7 Deputy chairperson**

- (1) The Board may from time to time appoint one of its members as the deputy chairperson of the Board.
- (2) During any vacancy in the office of chairperson, or in the absence of the chairperson from New Zealand, or while the chairperson is incapacitated by sick-

ness or otherwise, the deputy chairperson has and may exercise all the powers and functions of the chairperson.

## **8 Acts not to be called into question**

No one may question an appointment of a member of the Board to act as chairperson, or an act done by that member while acting as such, or an act done by the Board while any member is acting as such, in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased.

## **9 Co-opted members**

- (1) The Board may co-opt any person or persons whose qualifications or experience are likely, in the opinion of the Board, to be of assistance to the Board in dealing with any matter before the Board.
- (2) Every person so co-opted is entitled to take part in the proceedings of the Board in relation to that matter, but is not entitled to vote on that matter.

## **10 Committees**

- (1) The Board may from time to time, by resolution, appoint, alter, discharge, continue, or reconstitute any committee to advise the Board on any matters relating to the Board's functions and powers that are referred to that committee by the Board.
- (2) Any person may be appointed to be a member of a committee, whether or not that person is a member of the Board.
- (3) Subject to these regulations, and to any direction given by the Board, every committee may regulate its own procedure.

Schedule 2 clause 10(3): amended, on 3 March 2000, by regulation 4 of the Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

## **11 Delegation of functions and powers**

- (1) The Board may from time to time, either generally or specifically, delegate any of the Board's functions and powers to any of its committees, members, or employees.
- (2) However, the Board must not delegate the power of delegation conferred by subclause (1).
- (3) Every delegation must be in writing.
- (4) Any delegation may be made to—
  - (a) a specified person; or
  - (b) a person belonging to a specified class of persons; or
  - (c) the holder for the time being of a specified office or appointment; or
  - (d) the holder for the time being of an office or appointment of a specified class.

- (5) The committee or person to whom any such delegation is made may exercise or perform the delegated functions or powers in the same manner and with the same effect as if they had been conferred directly by these regulations and not by delegation.
- (6) Subclause (5) is subject to any general or special directions given or conditions imposed by the Board.
- (7) Every committee or person purporting to act pursuant to any delegation under this clause is presumed, in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.
- (8) Every delegation under this clause is revocable at will, but the revocation does not take effect until it is communicated to the delegate.
- (9) A delegation continues in force according to its terms until it is revoked, notwithstanding any change in the membership of the Board or of any committee.
- (10) No delegation under this clause prevents the performance or exercise of any function or power by the Board.

Schedule 2 clause 11(5): amended, on 3 March 2000, by regulation 4 of the Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

## **12 Contracts**

- (1) Board contracts must be made under the common seal of the Board if the contract is one which, if made by private persons, must be by deed.
- (2) Board contracts may be signed by a member of the Board or employee of the Board on behalf of and by authority of the Board if the contract is one that, if made by private persons, must be signed by the parties to be charged with it.
- (3) Board contracts may be made orally by or on behalf of the Board by any member of the Board or employee of the Board acting by authority of the Board if the contract is one that, if made by private persons, may be made orally, but no oral contract may be made for a sum exceeding \$2,000.
- (4) Failure to make a contract in a manner provided by this clause or clause 13 does not invalidate the contract if it was made pursuant to a resolution of the Board or to give effect to a resolution of the Board in relation to contracts generally or in relation to that particular contract.

## **13 Attorneys**

- (1) The Board may authorise any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand.
- (2) The authorisation must be in writing under the common seal of the Board.
- (3) An instrument executed by such an attorney on behalf of the Board binds the Board and, if executed as a deed, has the same effect as if it were under the common seal of the Board.

**14 Employees**

The Board may appoint employees that are necessary for the reasonable performance of its functions.

**15 Bank accounts**

- (1) The Board may open at any bank, or banks, such accounts as are necessary for the performance of its functions.
- (2) All money received by the Board, or by any member or employee of the Board for the purposes of the Board, must, as soon as practicable after it has been received, be paid into such bank accounts of the Board as the Board from time to time determines.
- (3) The withdrawal or payment of money from any such accounts must be authorised in such manner as the Board thinks fit.
- (4) Any bank account of the Board must be operated only by cheque or other instrument signed by a member or an employee of the Board authorised by the Board to do so, and must be countersigned by another member or employee of the Board authorised to do so.

**16 Expenditure not otherwise authorised**

The Board may, in any financial year, expend for lawful purposes not otherwise authorised by these regulations or any other enactment, any sum or sums not amounting in the aggregate to more than \$5,000.

Schedule 2 clause 16: amended, on 3 March 2000, by regulation 4 of the Kiwifruit Export Amendment Regulations 2000 (SR 2000/18).

**17 Seal**

The common seal of the Board must be judicially noticed in all courts and for all purposes.

Marie Shroff,  
Clerk of the Executive Council.

## **Reprints notes**

### **1 *General***

This is a reprint of the Kiwifruit Export Regulations 1999 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

### **2 *Legal status***

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3 *Editorial and format changes***

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4 *Amendments incorporated in this reprint***

Kiwifruit Export Amendment Regulations 2017 (LI 2017/159)  
Kiwifruit Export Amendment Regulations 2014 (LI 2014/46)  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Public Finance Amendment Act 2004 (2004 No 113): section 37(1)  
Kiwifruit Export Amendment Regulations (No 2) 2000: (SR 2000/56)  
Kiwifruit Export Amendment Regulations 2000: (SR 2000/18)