case study 2.1

Fonterra Co-Operative Group Limited shareholders’ rights in a liquidation

47. LIQUIDATION

47.1 Distribution of assets: If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution and any other sanction required by the Act:

(a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and

(b) for the avoidance of doubt, all Co-operative Shares are Shares of the same Class and rank pari-passu and without priority or preference among themselves on liquidation notwithstanding that they may have been issued for different Fair Values; and

(c) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.

SOURCE**:** Constitution of Fonterra Co-Operative Group Limited, 30 June 2010, Information on the Company, last accessed 02 September 2013: http://www.fonterra.com/wps/wcm/connect/ad590c8040a009d694d5f63dece10957/2154056+Consolidated+constitution+- +30+June+2010+-+v1.pdf?MOD=AJPERES

Questions

1 Briefly describe what is meant by a ‘company liquidation’.

2 What does the word ‘limited’ refer to in the company name ‘Fonterra Co-Operative Group Limited’?

3 If a company goes into liquidation, resources are normally distributed to creditors first. Who are the creditors?

4 Why would the creditors have priority over other stakeholders in the distribution of assets?

5 What is meant by a ‘co-operative’ form of business ownership?

6 What does the term ‘pari-passu’ mean in this context?

7 Explain how the surplus after the payment of all amounts owing to creditors and preference shareholders is to be distributed.