

SOUTH AUSTRALIA

BUILDING SOCIETIES ACT, 1990

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being

Building Societies Act, 1990, No. 85 of 1990
[Assented to 20 December 1990]¹

¹ Act not in operation.

An Act to provide for the registration, administration and control of building societies; to repeal the Building Societies Act, 1975; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Building Societies Act, 1990*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"accounting records" includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and books and records which record such entries, and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up:

"accounts" means profit and loss accounts and balance-sheets, and includes statements, reports and notes, other than auditors' reports or directors' reports, attached to or intended to be read with any of those accounts or balance-sheets:

"amalgamated building society" means a building society or foreign building society that is registered, or continues to be registered, under this Act as a result of an amalgamation under Part VII:

"approved accounting standard" means approved accounting standard as defined in Part VI of the *Companies (South Australia) Code*:

"association" means an association of building societies registered under Part XI:

"bank" means a body corporate authorized to carry on the business of banking under the *Banking Act 1959* of the Commonwealth, as varied from time to time, or under an Act substituted for that Act, and includes the State Bank of South Australia and any body authorized by the law of another State or a Territory of the Commonwealth to carry on the business of banking:

"board", in relation to a building society or association, means the board of directors of the building society or association:

"books" includes any register or other record of information and any accounts or accounting records, however compiled, recorded or stored, and also includes any document:

"building" includes part of a building:

4.

"building society" means a building society registered and incorporated under this Act:

"charge" means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether on demand or otherwise:

"chargee" means the holder of a charge and includes a person in whose favour a charge is given or executed, whether on demand or otherwise:

"the Commission" means the Corporate Affairs Commission:

"company" means a company as defined in section 5(1) of the *Companies (South Australia) Code*:

"corporation" means a corporation as defined in section 5(1) of the *Companies (South Australia) Code*:

"the Court" means the Supreme Court:

"credit union" means a credit union registered under the *Credit Unions Act, 1989*:

"date of amalgamation" means the date on which the Commission issues a certificate of amalgamation in respect of an amalgamation under Part VII:

"director", in relation to a corporation, means a director as defined in section 5(1) of the *Companies (South Australia) Code*:

"disclosure statement" means a disclosure statement issued or to be issued by a building society in accordance with Part IV in relation to securities the subject of any public offer, invitation or issue by the building society:

"executive officer", in relation to a building society, foreign building society or association, means a person by whatever name called who is concerned, or takes part, in the management of the body:

"expert", in relation to a matter, means a person whose profession or reputation gives authority to a statement made by the person in relation to the matter:

"foreign building society" means a body corporate registered as a foreign building society under Part X or under Part VII as a result of an amalgamation under that Part:

"friendly society" means a friendly society incorporated under the *Friendly Societies Act, 1919*:

"group" means a holding building society and the subsidiaries of that building society:

"group accounts", in relation to a holding building society, means a set of consolidated accounts for the group in relation to which that building society is the holding building society:

"guarantee" includes indemnity:

"issue", in relation to shares, includes allot:

5.

"loan" includes the provision of credit by any means and "borrow" has a corresponding meaning:

"member", in relation to a building society, means any person who holds, whether singly or jointly, a share in the building society or who has otherwise been admitted to membership of the building society in accordance with the rules of the building society:

"officer", in relation to a building society, foreign building society or association, means a director, secretary, treasurer, principal accounting officer or executive officer of the building society, foreign building society or association:

"permanent share", in relation to a building society, means a share in the building society other than a withdrawable share:

"prescribed interest" means prescribed interest as defined in section 5(1) of the *Companies (South Australia) Code*:

"profit or loss" means—

(a) in relation to a building society—the profit or loss resulting from the operations of the building society;

or

(b) in relation to a holding building society and its subsidiaries—the profit or loss resulting from the operations of the group constituted of the building society and its subsidiaries:

"prospectus" means a prospectus as defined in section 5(1) of the *Companies (South Australia) Code*, and includes an instrument issued in relation to shares in a building society that would be a prospectus if the building society were a corporation:

"the repealed Act" means the *Building Societies Act, 1975*, repealed by this Act:

"residential building" means a building occupied or to be occupied by a person as the person's principal place of residence whether as owner, pursuant to a lease or tenancy agreement or otherwise, and includes—

(a) a building intended to provide accommodation for aged persons, persons with physical or mental disabilities or indigent persons;

(b) a retirement village within the meaning of the *Retirement Villages Act, 1987*, or a residential unit within the meaning of that Act;

(c) a building of a class declared by regulation to be residential buildings for the purposes of this Act,

but does not include a building that is not situated within South Australia or a building of a class declared by regulation not to be residential buildings for the purposes of this Act:

"residential development" means—

- (a) construction or improvement of a residential building or conversion of a building to a residential building;
- (b) acquisition of land for development referred to in paragraph (a);
- (c) division of land for development referred to in paragraph (a):

"securities" includes shares, debentures, stock, bonds, bills, notes, options, prescribed interests, and documents of any kind evidencing indebtedness, but does not include, in relation to any provision of this Act, securities of a class excluded by regulation from the application of that provision:

"share", in relation to a building society, means share in the share capital of the building society:

"stock market" means a facility by means of which—

- (a) offers, invitations or acceptances for the sale, purchase or exchange of securities are regularly made or matched;
- (b) information is regularly provided as to the prices or consideration expected or required for the sale, purchase or exchange of securities:

"withdrawable share", in relation to a building society, means a share in the building society that may be withdrawn by the holder of the share and includes—

- (a) such a share that may be withdrawn only after a specified period has elapsed or notice of a specified period has been given;

and

- (b) shares of a prescribed class.

Note: For definition of divisional penalties see Appendix.

Offer or invitation to the public

4. For the purposes of this Act—

- (a) a reference to an invitation to subscribe for or purchase securities includes a reference to an invitation to make an offer to subscribe for or purchase securities;
- (b) a reference to an offer of securities for subscription or purchase includes a reference to an offer to accept money on deposit or loan;
- (c) a reference to an invitation to subscribe for or purchase securities includes a reference to an invitation to lodge money on deposit or loan;
- (d) a reference to the public includes a reference to a section of the public, including the membership of a building society or a section of the membership of a building society.

Subsidiaries, holding corporations and related corporations

5. (1) In this section—

"corporation" means a corporation as defined in section 5(1) of the *Companies (South Australia) Code*, and includes a building society.

(2) For the purposes of this Act, a corporation is, subject to subsection (4), to be taken to be a subsidiary of another corporation if—

(a) that other corporation—

(i) controls the composition of the board of directors of the first mentioned corporation;

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first mentioned corporation;

or

(iii) holds more than one-half of the issued share capital of the first mentioned corporation (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

or

(b) the first mentioned corporation is a subsidiary of any corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).

(3) Without limiting by implication the circumstances in which the composition of a corporation's board of directors is to be taken to be controlled by another corporation, the composition of a corporation's board of directors is to be taken to be controlled by another corporation if that other corporation, by the exercise of some power exercisable (whether with or without the consent or concurrence of any other person) by that other corporation, can appoint or remove all or a majority of the directors, and for the purposes of this provision that other corporation is to be taken to have power to make such an appointment if—

(a) a person cannot be appointed as a director without the exercise in his or her favour by that other corporation of such a power;

or

(b) a person's appointment as a director follows necessarily from his or her being a director or other officer of that other corporation.

(4) In determining whether one corporation is a subsidiary of another corporation—

(a) any shares held or power exercisable by that other corporation in a fiduciary capacity are to be treated as not held or exercisable by it;

8.

- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
- (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity);
- or
- (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity,
- are to be treated as held or exercisable by that other corporation;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation, or of a trust deed for securing any issue of such debentures, are to be disregarded;
- and
- (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) are to be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with a person associated with the other corporation or its subsidiary.

(5) A reference in this Act to the holding corporation of another corporation is a reference to a corporation of which that other corporation is a subsidiary.

(6) Where a corporation—

(a) is the holding corporation of another corporation;

(b) is a subsidiary of another corporation;

or

(c) is a subsidiary of the holding corporation of another corporation,

that first mentioned corporation and that other corporation are, for the purposes of this Act, to be taken to be related to each other.

Associates and groups of associated members

6. (1) Subject to subsection (2), for the purposes of this Act, a person is an associate of another or is associated with another if—

(a) they are partners;

(b) one is a spouse, parent or child of another;

9.

- (c) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust;
 - (d) one is a body corporate or other entity (whether inside or outside Australia) and the other is a director or member of the governing body of the body corporate or other entity;
 - (e) one is a body corporate or other entity (whether inside or outside Australia) and the other is a person who has a legal or equitable interest in five per cent or more of the share capital of the body corporate or other entity;
 - (f) they are related corporations;
 - (g) a relationship of a prescribed kind exists between them;
- or
- (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(2) Notwithstanding subsection (1), the Minister may, by notice in writing to the persons and any building society concerned, determine that specified persons are not to be treated as associates either generally or for a purpose specified in the notice.

(3) For the purposes of this Act, where—

- (a) one or more members of a building society are associates of any other member of the building society;
- or
- (b) two or more members of a building society are associates of a person who is not a member of the building society,

those members constitute a group of associated members of the building society.

Companies and Securities Industry Codes do not apply to building societies or associations

7. (1) Except as otherwise expressly provided by or under this Act, the provisions of—

- (a) the *Companies (South Australia) Code*;
 - (b) the *Companies (Acquisition of Shares) (South Australia) Code*;
- and
- (c) the *Securities Industry (South Australia) Code*,

do not apply to or in relation to a building society or association.

(2) The regulations may apply specified provisions of the Codes referred to in subsection (1) to or in relation to building societies or associations, subject to such modifications as may be prescribed by regulation.

Application of Act to Starr-Bowkett building societies

8. (1) This Act applies to Starr-Bowkett building societies with such modifications, additions or exclusions as are prescribed by regulation.

(2) In this section—

"Starr-Bowkett building society" means a society that was, immediately before the commencement of this Act—

(a) registered as a building society under the repealed Act;

and

(b) authorized to grant loans according to a procedure under which applicants ballot for precedence or are chosen by chance or lot.

PART II

ADMINISTRATION

DIVISION I—THE COMMISSION

Administration of Act

9. The Commission is, subject to the control and direction of the Minister, responsible for the administration of this Act.

Registers and inspection

10. (1) For the purposes of this Act, the Commission must keep, in such form as it considers appropriate—

- (a) a register of building societies registered under this Act;
- (b) a register of foreign building societies registered under this Act;

and

- (c) such other registers as this Act may require or as the Commission considers appropriate.

(2) Subject to the regulations, a person may, on payment of the prescribed fee—

- (a) inspect a register kept by the Commission under this Act;
- (b) inspect any document registered by, or filed or lodged with, the Commission under this Act;

or

- (c) obtain from the Commission—
 - (i) a certified copy of, or extract from, an entry in a register kept under this Act;
 - (ii) a certified copy of a certificate of incorporation, certificate of registration or certificate of amalgamation issued under this Act;

or

- (iii) a certified copy of, or extract from, any document registered by, or filed or lodged with, the Commission under this Act.

(3) If the Commission adopts a system of record keeping that involves the making of reproductions or transparencies of certificates or other documents—

- (a) the Commission cannot be required to produce the document from which the reproduction or transparency was produced;

12.

(b) any such reproduction or transparency is equivalent to an original;

and

(c) a copy produced from the reproduction or transparency is to be regarded as a copy of the original.

Annual reports

11. (1) The Commission must on or before 30 September in each year submit to the Minister a report on the administration of this Act during the period of 12 months that ended on the preceding 30 June.

(2) The Minister must within 12 sitting days after receipt of the report cause a copy of the report to be laid before each House of Parliament.

DIVISION II—ADVISORY COMMITTEE

The Advisory Committee

12. (1) The *Building Societies Advisory Committee* is established.

(2) The Committee is to consist of six persons appointed by the Minister of whom—

(a) one must be the Commissioner for Corporate Affairs or a nominee of the Commissioner;

(b) one must be a nominee of the Treasurer;

(c) one must be a nominee of the Minister of Housing and Construction;

and

(d) three must be persons who are, in the opinion of the Minister, suitably qualified to represent the interests of building societies.

(3) Subject to subsection (4), the Minister may appoint a suitable person to be a deputy of a member of the Committee, and the deputy, while acting in the absence of that member, has all the powers, rights and duties of that member.

(4) The Minister may not appoint a person as the deputy of a member appointed under subsection (2)(b) or (c) unless that person has first been nominated by the Treasurer or the Minister of Housing and Construction respectively.

(5) A member of the Committee holds office at the pleasure of the Minister.

(6) The functions of the Committee are—

(a) to make recommendations to the Minister on the more effective operation of building societies;

(b) to make recommendations to the Minister in relation to regulations and model rules under this Act;

13.

- (c) to make recommendations to the Minister in relation to maximum rates of interest applicable to loans made by building societies;
- (d) to keep legislation relevant to the operation of building societies under review and, where appropriate, to recommend amendments;
- (e) to advise the Minister or the Commission on matters referred to the Committee for advice;

and

- (f) to advise the Minister generally on the operation of building societies and matters relevant to the administration of this Act.

DIVISION III—POWERS OF INSPECTION

Extension of Companies Code powers of inspection

13. (1) The provisions of the *Companies (South Australia) Code* relating to inspection (Division I of Part II) extend, with such modifications, exclusions or additions as may be necessary for the purpose or as may be prescribed, to—

- (a) a building society;
- (b) a foreign building society;
- (c) an association;
- (d) a corporation that is a subsidiary of a building society;
- (e) a corporation or other body corporate with which a building society, or a subsidiary of a building society, has invested funds;

or

- (f) a prescribed body corporate or body corporate of a prescribed class,

as if, in the case of such a body that is not a company, it were a company.

(2) Without limiting the effect of subsection (1), any such powers of inspection may be exercised—

- (a) for a purpose or in relation to a matter referred to in Division I of Part II of the *Companies (South Australia) Code*;

or

- (b) for a purpose or in relation to a matter related to the administration or enforcement of this Act.

PART III

BUILDING SOCIETIES

DIVISION I—CARRYING ON BUSINESS AS A BUILDING SOCIETY

Building society must be registered under this Act

14. (1) Subject to this section, a person or body of persons, whether incorporated or unincorporated, other than a body that is registered as a building society or foreign building society under this Act, must not—

- (a) carry on business as a building society;
 - (b) carry on business under any name or title of which the expression "building society" forms a part;
- or
- (c) in any manner hold out that its business is that of a building society.

Penalty: Division 4 fine.

(2) For the purposes of subsection (1)—

- (a) a person or body of persons is to be taken to be carrying on business as a building society in the State if the person or body—
 - (i) administers a fund in the State into which members of a group of persons contribute money and which is applied solely or principally in loans to those members for the purpose of purchasing residential buildings or for residential development;
 - (ii) advertises for share capital, deposits or loan funds in the State under any name or title of which the expression "building society" forms a part;
- or
- (iii) being a body carrying on business as a building society outside the State—
 - (A) advertises for share capital, deposits or loan funds in the State;
 - (B) establishes or uses an office in the State for the receipt of share capital, deposits or loan funds;
- or
- (C) makes loans to members residing in the State;

- (b) a body carrying on business as a building society outside the State is not to be taken to be carrying on such a business in the State for the reason only that in the State it—
- (i) is or becomes a party to an action or suit or arbitration proceedings or effects settlement of an action, suit or proceedings or of any claim or dispute;
 - (ii) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;
 - (iii) maintains any bank account;
 - (iv) effects any sale through an independent contractor;
 - (v) creates evidence of any debt or creates a charge on real or personal property;
 - (vi) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts;
 - (vii) conducts an isolated transaction that is completed within a period of 31 days, but not being one of a number of similar transactions repeated from time to time;
- or
- (viii) invests any of its funds or holds any property.

(3) This section does not apply to—

- (a) a person or body of persons (whether incorporated or unincorporated) exempted by the Minister from the provisions of this section;
 - (b) a bank;
 - (c) a credit union;
 - (d) a friendly society;
- or
- (e) a co-operative registered under the *Co-operatives Act, 1983*.

(4) The Minister may, by instrument in writing, grant a conditional or unconditional exemption for the purposes of subsection (3) and may, on non-compliance with a condition of the exemption, by instrument in writing, revoke the exemption.

DIVISION II—OBJECTS OF BUILDING SOCIETIES

Objects

15. (1) A building society must have as a primary object under its rules that the society is to operate as a financial co-operative—

(a) raising funds by subscription, or otherwise, as authorized by this Act;

and

(b) applying those funds, subject to this Act and its rules, in providing loans to its members for the purchase of residential buildings or for residential development.

(2) Subject to this Act, a building society may include in its primary objects under its rules that—

(a) the society is to undertake residential development itself;

(b) the society is to provide capital for residential development by making loans to, or acquiring securities issued by, a subsidiary of the building society that has as its object or one of its objects the carrying out of residential development;

or

(c) the society is to invest in a property trust established and managed by the building society solely or principally for the purpose of carrying out residential development.

(3) Subject to this Act, a building society may have such secondary objects as it thinks fit and specifies in its rules.

(4) The regulations may make provision for or with respect to the secondary objects of building societies and, in particular, may—

(a) prohibit the specification of secondary objects of a class or description referred to in the regulations;

(b) restrict the application or scope of secondary objects by the imposition of conditions or otherwise, whether or not being objects already specified in the rules of a building society;

(c) make provisions of a savings or transitional nature in relation to any such prohibition or restriction.

DIVISION III—FORMATION AND REGISTRATION

Formation of building society

16. (1) Subject to this Part, a building society may be formed by any 25 or more natural persons of full age and capacity.

(2) No building society may be formed unless there has been a meeting for the purpose of forming the building society at which there are present 25 or more natural persons of full age and capacity.

(3) At the meeting referred to in subsection (2), the following documents must be presented to the prospective members of the building society:

- (a) a written statement showing the objects of the building society and the reasons for believing that an application for registration of the building society should be granted and that, if registered, the building society would be able to carry out its objects successfully;

and

- (b) a copy of the rules that are to be tendered for registration.

(4) If, at the formation meeting, or any subsequent or adjourned meeting, 25 or more persons of full age and capacity, after consideration of the statement and the rules, approve the rules with or without amendment, and sign an application for membership and shares, they may proceed to elect the first directors of the building society in accordance with the rules as so approved.

(5) No application for shares in a proposed building society, made prior to the registration of that building society, may be withdrawn, and every person who makes such an application is, on the registration of the building society, liable to pay to the building society—

- (a) the value of the shares for which the person applied;

or

- (b) the value of the minimum number of shares for which a member of the building society is entitled to subscribe,

whichever is the greater.

(6) The expenses of, and incidental to, the formation of the building society may be paid out of the capital or income of the building society.

(7) A person must not, prior to the registration of a building society—

- (a) make any offer or invitation to the public for the purpose of raising funds for the building society whether by the issue of shares or other securities or the acceptance of money on deposit or loan;

or

- (b) take any money in consideration of the issue of any shares or other securities of, or the grant of any loan by, the building society.

Penalty: Division 4 fine or division 4 imprisonment.

Registration

17. (1) A building society formed in accordance with this Part may apply to the Commission in the prescribed manner to be registered under this Act.

(2) An application for registration—

(a) must be made within two months after the formation meeting at which the first directors of the building society were elected;

and

(b) must be accompanied by—

(i) a statutory declaration by the person presiding at the formation meeting and the secretary of that meeting that the requirements of this Part as to formation have been complied with;

(ii) a copy of the statement presented to the meeting, signed by the person presiding and the secretary;

(iii) two copies of the proposed rules of the building society, certified by the person presiding and the secretary to be the rules as approved at the meeting;

(iv) a list containing the full name, address and occupation of each director;

(v) a list containing the full name, address and occupation of each of 25 natural persons of full age and capacity who attended the meeting and applied for membership and shares;

(vi) written estimates of all income (including deposits and share capital) and expenditure (including loans and allocation of funds to reserves) over each of the first three years of operation of the building society;

(vii) such evidence as the Commission may require as to the eligibility of the building society for registration;

and

(viii) such other evidence as the Commission may require that the building society would, on registration, be able to carry out its objects successfully.

(3) If, on due application for registration under this section, the Commission is satisfied that the building society is eligible for registration, the Commission must register the building society and its rules and issue a certificate of incorporation in the prescribed form.

(4) A building society is eligible for registration under this section if—

(a) the proposed rules of the building society are not contrary to this Act;

- (b) there are reasonable grounds for believing that, before the expiration of the period of three months from the date of its registration, the building society would have a paid-up share capital of not less than \$10 000 000 of which not less than half is available on terms such that—
 - (i) repayment is not required before the expiration of seven years from the date of its receipt by the building society;and
 - (ii) repayment may not be made except with the consent of the Commission;
 - (c) there are reasonable grounds for believing that the building society, if registered, would be able to comply with the requirements of Part V and carry out its objects successfully;
- and
- (d) there is no good reason why the building society or the proposed rules should not be registered.

DIVISION IV—INCORPORATION AND GENERAL POWERS

Incorporation

18. On the issue of a certificate of incorporation under this Part or under Part VII, a building society is a body corporate and—

- (a) has, subject to this Act and the rules of the building society, the legal capacity of a natural person;
 - (b) has perpetual succession and must have a common seal;
- and
- (c) may sue and be sued in its corporate name.

General powers

19. (1) Without limiting the effect of section 18, but subject to this Act and the rules of the building society, a building society has power—

- (a) to raise money—
 - (i) by issuing shares or other securities;or
 - (ii) by accepting deposits;
- (b) to borrow money;

- (c) to give security by mortgaging or granting a floating charge over the whole undertaking of the building society or any rights or property of the building society or by any other means;
 - (d) to acquire, hold, deal with and dispose of real and personal property;
 - (e) to enter into contracts of employment, partnerships, joint ventures or any other contracts or arrangements;
 - (f) to make loans and to give guarantees;
 - (g) to form or acquire subsidiaries in Australia (but in no other place) for the carrying out of its objects;
 - (h) to acquire securities of, make loans to, or give guarantees on behalf of, a subsidiary of the building society that is incorporated in Australia (but in no other place);
 - (i) to act as an agent or as a trustee and accept and hold in trust real and personal property;
 - (j) to invest its funds in any manner;
 - (k) to carry on all or any of its operations as a building society in another State or Territory of the Commonwealth (but in no other place) and, for that purpose, to exercise its other powers in such State or Territory;
 - (l) to procure registration or recognition as a building society in another State or Territory of the Commonwealth;
 - (m) to distribute any property of the building society among its members, in kind or otherwise;
- and
- (n) to do any other thing authorized by this Act or the rules of the building society.

(2) The powers of a subsidiary formed or acquired by a building society are not limited by the objects of the building society or by limitations on the powers of the building society.

(3) Without limiting the effect of subsection (2), nothing in subsection (1) prevents a corporation that is a subsidiary of a building society from forming or acquiring a body corporate or other entity outside Australia as a subsidiary of that corporation.

(4) The regulations may make provision for or with respect to the powers of building societies and, in particular, may—

- (a) withdraw powers of a specified kind conferred by this Act or the rules of a building society;

21.

(b) restrict the scope of powers of a specified kind conferred by this Act or the rules of a building society;

and

(c) make provisions of a savings or transitional nature in relation to any such withdrawal or restriction.

DIVISION V—RULES

Contents of rules

20. The Commission must not register any rules of a proposed building society unless—

(a) they contain, in the opinion of the Commission, adequate provisions requiring the building society to insure against wrongful acts and defaults of its officers and employees and against other insurable risks assumed by the building society in the conduct of its business;

and

(b) they contain the prescribed provisions and otherwise comply with the requirements of this Act.

Effect of rules

21. The rules of a building society bind the building society, its members and all persons claiming under them.

Copies of rules

22. A building society must furnish any person with a copy of its rules on application and payment of the prescribed fee.

Alteration of rules

23. (1) A building society may, by special resolution, alter its rules, but any such alteration does not take effect until it has been registered in accordance with this section.

(2) A building society must, within one month of the date of the meeting at which the special resolution approving an alteration was passed, apply to the Commission to have the alteration registered.

(3) Where the Commission is satisfied that the proposed alteration complies with the requirements of this Act, the Commission must register the alteration.

Power of Commission to alter rules

24. (1) Where, in the opinion of the Commission, the rules of a building society should be altered—

(a) to achieve compliance with any requirement of this Act;

(b) in the interests of the members of the building society;

or

(c) in the public interest,

the Commission may, by instrument in writing served on the building society, require it, within a period specified in the notice, to alter its rules in a manner specified in the instrument or otherwise in a manner approved by the Commission.

(2) Where a building society is required to alter its rules pursuant to subsection (1), the building society is not required to do so by special resolution or to obtain the approval of its members.

(3) Where a building society fails to comply with a requirement that it alter its rules, the Commission may itself make the required alteration by notation on the registered copy of the rules.

(4) The Commission must give a building society notice in writing of any alteration of the rules of the building society effected by the Commission pursuant to this section and of the date on which the alteration comes into operation.

(5) Where the rules of a building society are altered by the building society or by the Commission pursuant to this section, the building society must notify its members of the alteration—

(a) within one month of the alteration by notice published on two separate days in a newspaper circulating generally in the State and, where the building society is carrying on business as a building society in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory;

and

(b) by notice given at the next meeting of the building society.

DIVISION VI—MEMBERSHIP

Members

25. (1) The members of a building society formed under this Act are those persons who sign an application for membership on the formation of the building society and any other persons who hold shares in the building society or are otherwise admitted to membership in accordance with the rules of the building society.

(2) No rights of membership may be exercised by any person until the person has made such payments in respect of membership, or acquired such shares or interests, as are required under the rules of the building society.

Minors

26. (1) Subject to any contrary provision in the rules of a building society, a person under the age of 18 years may be a member of a building society.

(2) A minor is not entitled to exercise any vote at any meeting of the building society.

Corporate member of building society

27. (1) A body corporate may, if the rules of a building society so provide, become a member of the building society.

(2) A corporate member may, by instrument in writing (a copy of which must be served on the building society), appoint a natural person to represent it at any meeting of members of the building society.

(3) Any person appointed under subsection (2) is entitled to receive notice of all meetings in the same manner as a member of the building society and is entitled to exercise the same rights of voting (either in person or by proxy) as a member of the building society.

Joint membership

28. (1) Where shares in a building society are held jointly or persons are admitted to membership as joint members, then, for the purpose—

(a) of determining who is qualified to vote on a resolution of a meeting of the building society;

and

(b) of determining the number or proportion of any members required to give effect to any provision of this Act or the rules of the building society,

the member whose name appears first in the register of members of the building society is to be taken to be a member to the exclusion of the other person.

(2) Joint members of a building society are entitled to choose the order in which they are named in the register of members, but, failing any such choice, the building society may enter their names in such order as it thinks fit.

(3) Subject to the rules of a building society, where all shares in a building society held by a member are held jointly with another, any notice or other document may be given or sent by the building society to that member by giving or sending it to the member whose name appears first in the register of members of the building society.

Liability of members

29. Except as otherwise provided by this Act, a member of a building society is not liable by reason of his or her membership to contribute towards the payment of the debts and liabilities of the building society or the costs, charges and expenses of a winding up of the building society.

DIVISION VII—NAME AND OFFICE

Name

30. (1) The registered name of a building society is its name as specified in the rules of the building society for the time being registered under this Act.

(2) The Commission must not register proposed rules or an alteration of the rules of a building society affecting the name of the building society unless satisfied that the proposed name—

(a) is not such as to be misleading as to the nature, objects or purposes of the building society;

(b) is not such as is likely to be confused with the name of any other body corporate or any registered business name;

(c) is not undesirable as a name for a building society;

and

(d) complies with any directions of the Minister as to the names of building societies.

(3) Where the Commission registers an alteration of the rules of a building society changing the name of the building society, the Commission, may, on the application of the building society, amend its certificate of incorporation or issue a fresh certificate.

(4) Where the registered name of a building society is changed pursuant to this Act, the building society must publish the change of name in such manner as the Commission directs.

(5) The Commission may, on the application of a building society, approve the use by a building society of a name other than its registered name subject to such conditions limiting the area and circumstances in which the other name may be used as the Commission may determine.

(6) The Commission may, by notice in writing to a building society, withdraw an approval given to the building society under subsection (5).

(7) A building society must not use a name other than—

(a) its registered name;

or

(b) subject to the conditions of the approval, a name approved under subsection (5).

Office and service

31. (1) Every building society must have a registered office.

(2) The first registered office of a building society is that appearing in the rules of the building society at the time of registration.

(3) If a building society desires to change its registered office, it must give notice in writing of the address of the new office to the Commission and, on registration by the Commission of the new address or on such later date as the building society may specify, the office becomes the registered office of the building society.

(4) A document may be served on a building society or an officer of the building society by leaving it at the registered office of the building society or by post enclosed in a prepaid registered letter addressed to the building society at its registered office.

Publication of name

32. (1) A building society must cause its registered name or a name approved by the Commission under this Division to appear in legible characters on its seal and in legible characters on all business letters, notices, advertisements and other official publications of the building society and on all bills of exchange, cheques, promissory notes, endorsements, orders for money or goods, invoices, receipts and other documents required in the business of the building society.

(2) A building society must paint or affix and keep painted or affixed on the outside of every office or place in which its business is carried on in a conspicuous position in letters easily legible its registered name or a name approved by the Commission under this Division and also, in the case of the registered office, the words "Registered Office".

PART IV

SHARES, OTHER SECURITIES AND CHARGES

DIVISION I—SHARES

General

33. (1) Shares in a building society may be of varying nominal values and of one or more classes as provided in the rules of the building society.

(2) Without limiting the effect of subsection (1), preference shares may be issued as a class of withdrawable shares or permanent shares.

(3) The Commission may, by notice published in the *Gazette*, declare that specified preference shares issued by a building society are a class of withdrawable shares or a class of permanent shares.

(4) A declaration under subsection (3) has effect and is final for the purposes of the application of this Act in relation to the shares to which the declaration relates.

(5) The rights attaching and terms and conditions applying to a class of shares are as provided in the rules of the building society or determined by the board in accordance with the rules, but no such rules may be registered unless the provisions in respect of those rights, terms and conditions comply with the requirements of this Act and are, in the opinion of the Commission, otherwise appropriate.

(6) Permanent shares in a building society may be issued as fully paid-up shares or shares to be paid for by periodical or other subscription.

(7) The rules of a building society may not provide for any share capital to be repaid in the event of the winding up of the building society in priority to funds of the building society consisting of deposits made with the building society.

(8) Subsection (7) does not prevent a building society from accepting money on deposit under an agreement under which the claims of the depositor are, in the event of the winding up of the building society, subordinated to the claims of other creditors and the holders of shares other than permanent shares in the building society.

(9) Where the rules of a building society provide for the issue of permanent shares of different classes, the rules must provide that each class of permanent shares ranks equally with the other class or classes of permanent shares in the event of the winding up of the building society.

(10) The amount of the share capital of a building society is to be determined according to the nominal value of the shares from time to time issued by the building society.

(11) A building society must not issue any shares other than permanent shares at a premium.

(12) The liability of a member of a building society in respect of a share on which no loan has been made is limited to the amount (if any) in arrears in respect of that share.

(13) The liability of a member of a building society in respect of a share on which a loan has been made is limited to the amount payable under or in respect of the loan together with the amount (if any) in arrears in respect of the share.

(14) A share in a building society may not be sold or transferred except with the approval of the board of the building society.

Rights of holders of preference shares to be set out in rules

34. A building society must not allot any preference shares or convert any issued shares into preference shares unless there are set out in the rules of the building society the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, payment of interest, voting, and priority of payment of capital, dividend and interest in relation to other shares or other classes of preference shares.

Limitation on shareholding

35. (1) Subject to this section, if—

(a) the total nominal value of the permanent shares held by a member or a group of associated members of a building society exceeds the prescribed percentage of the total nominal value of all permanent shares issued by the building society;

or

(b) the total nominal value of the withdrawable shares held by a member or a group of associated members of a building society exceeds the prescribed percentage of the total nominal value of all withdrawable shares issued by the building society,

the building society must—

(c) in the case of either permanent or withdrawable shares, cancel the excess shares and pay to the holder of any such cancelled shares the amount paid up on the shares, together with any other amount to which the holder may be entitled in respect of those shares;

or

(d) in the case of permanent shares, forfeit and sell the excess shares.

(2) This section does not apply in relation to excess shares in a building society held by a member or group of associated members if—

(a) the member or one or more of the group had, before acquiring the excess shares, reported the proposal to acquire them to the Commission and obtained the approval of the Minister under Part VII;

and

(b) the total nominal value of the shares held by the member or the group does not exceed the limit approved by the Minister under Part VII in relation to that member or group.

(3) For the purposes of this section, the prescribed percentage is—

(a) in relation to permanent shares—10 per cent, or, if the building society specifies in its rules a lesser percentage to apply instead, that lesser percentage;

or

(b) in relation to withdrawable shares—10 per cent, or, if the building society specifies in its rules a lesser percentage to apply instead, that lesser percentage.

(4) A building society that is required to cancel shares pursuant to this section must do so whether or not its rules make provision for the cancellation of shares.

(5) A building society must not cancel shares in accordance with this section if the result of taking such action would be that the building society fails to hold prime assets that satisfy the required prime assets ratio, or fails to maintain capital adequacy, in accordance with Part V, but, in that case, the building society must notify the Commission and take such action as the Commission may determine to achieve compliance with this section within such period as the Commission may determine.

(6) The order in which any shares are cancelled pursuant to this section must be as determined under the rules of the building society, or if there are no rules relating to that matter, as determined by the board of the building society.

(7) Section 53 applies in relation to the offering and sale of shares forfeited pursuant to this section as if the shares had been forfeited for non-payment of a call.

(8) Where—

(a) the total nominal value of shares held by a member or a group of associated members of a building society exceeds the limit fixed by this section;

and

(b) the building society is required to cancel or forfeit and sell the excess shares,

that member, or each member in that group of associated members, as the case may be, is not entitled to a vote in any meeting of members of the building society until the excess shares are cancelled or forfeited and sold.

Conversion of withdrawable share capital to deposits

36. (1) If authorized by its rules, a building society may, by special resolution, establish a scheme for the conversion of withdrawable share capital of the building society to deposits.

(2) A scheme under this section—

(a) must make provision—

(i) for the cancellation, subject to this Act, of the withdrawable shares to which the scheme applies;

and

- (ii) for the recording in the accounts of the building society, as a deposit lodged by each member who was the holder of shares so cancelled, of an amount equal to the amount paid up by the member on those shares, together with any other amount to which the member may be entitled in respect of the shares;
- (b) if the membership status of a person holding shares affected by the scheme would otherwise be lost, must make provision for the preservation of that status by one or more of the following:
- (i) by excluding shares, or conferring on the member the right to exclude shares, from the scheme;
 - (ii) by conferring on the member the right to subscribe for permanent shares in place of shares affected by the scheme;
 - (iii) by such other means as may be approved by the Commission;

and

- (c) may make provision for rights attaching to shares affected by the scheme to attach to other shares that will continue to be held by the member after implementation of the scheme.

(3) Special resolutions may be passed at a single meeting of a building society for the purposes of—

- (a) altering the rules of the building society so as to authorize it to establish a scheme under this section;

and

- (b) establishing the scheme,

but, except to the extent necessary to enable both resolutions to be passed at the same meeting, the resolutions may not take effect before the alteration of rules has been registered by the Commission in accordance with Part III.

(4) A scheme under this section may not take effect unless the building society satisfies the Commission, by lodging such documents as the Commission may require, that it has—

- (a) taken action, as required by the Commission, to invite and receive applications from creditors for the discharge, partial discharge or securing of liabilities arising from debts or claims that would, as at the date fixed by the Commission, have been admissible in proof against the building society if the building society had then commenced to be wound up;

and

- (b) discharged or secured, or made appropriate arrangements for discharging or securing, such liabilities in accordance with applications received by it within a period fixed by the Commission.

Cancellation and forfeiture of shares

37. (1) The rules of a building society may provide for the cancellation by the building society or forfeiture to the building society of any of its shares, but no such rules may be registered unless the provisions in respect of cancellation or forfeiture comply with the requirements of this Act and are, in the opinion of the Commission, otherwise appropriate.

(2) Subject to this section, permanent shares in a building society may not be cancelled by the building society except—

- (a) in accordance with its rules and with the approval of the Commission;

or

- (b) pursuant to a provision of this Act other than this section.

(3) Where the Commission gives approval to the cancellation of permanent shares in a building society, the Commission may attach conditions to the approval and may, on non-compliance with a condition of the approval, revoke the approval.

(4) Subject to this section, shares (of any class) in a building society may not be cancelled by the building society if the membership status of the person holding any such shares would be lost except—

- (a) in accordance with the rules of the building society and at the request or with the consent of the person;

or

- (b) pursuant to a provision of this Act other than this section.

(5) Subject to subsection (6), a building society must not cancel any shares if the result of taking such action would be that the building society fails to hold prime assets that satisfy the required prime assets ratio, or fails to maintain capital adequacy, in accordance with Part V.

(6) Notwithstanding any other provision of this Act, a building society must cancel any share that is forfeited to the building society in accordance with this Act or its rules and is not required by this Act to be sold.

(7) Except in the case of shares in the building society forfeited to the building society or cancelled pursuant to a provision of this Act other than this section, a building society must pay to the holder of cancelled shares the amount paid up on the shares, together with any other amount to which the holder may be entitled in respect of the shares.

Charge and set off

38. (1) A building society has, in respect of any debt due from a member or past member of the building society, a charge on the shares of that member of the building society, and on the credit balance of any deposit account of that member or past member and on any dividend, interest, bonus or rebate payable to that member or past member.

(2) The charge created by this section may be enforced by the appropriation by the building society of the share capital or other money subject to the charge.

(3) Any share in respect of which the whole of the capital has been so appropriated is forfeited to the building society.

Dividends, interest, etc., in respect of shares

39. (1) A building society may, if authorized by its rules, and the board of the building society so determines, in respect of a particular class of shares—

(a) distribute profits by way of dividends or bonus shares (whether fully or partly paid-up) to the holders of the shares;

or

(b) pay interest out of its revenue to the holders of the shares,

or both.

(2) Dividends or bonus share issues in respect of permanent shares may vary in value proportionately according to the extent to which each permanent share in respect of which the payment or issue is made is paid up.

(3) A building society is guilty of an offence if dividends are paid otherwise than out of profits or, in the case of permanent shares, out of a share premium account maintained by the building society in accordance with Division III.

(4) If dividends are paid otherwise than out of profits in contravention of subsection (3), the creditors of the building society are entitled to recover from any officer of the building society who has knowingly caused or permitted such payment to be made the amount of the debts due by the building society to them respectively to the extent that the dividends so paid have exceeded profits.

(5) If the whole amount is recovered from one officer, that officer may recover contribution from any other officer similarly liable.

(6) A liability imposed on an officer under this section is extinguished on that person's death.

(7) In this section—

"dividend" includes a payment by way of bonus.

Validation of shares improperly issued

40. (1) Where a building society has purported to issue shares and—

(a) the creation or issue of those shares is invalid by reason of any provision of this Act or of the rules of the building society or for any other reason;

or

(b) the terms of the purported issue are inconsistent with or are not authorized by any such provision,

the Court may, on application made by the building society, by a holder or mortgagee of any of those shares or by a creditor of the building society and on being satisfied that in all the circumstances it is just and equitable to do so, make an order—

(c) validating the purported issue of those shares;

or

(d) confirming the terms of the purported issue of the shares,

or both.

(2) On an office copy of an order made under subsection (1) being lodged with the Commission, the shares to which the order relates are to be taken to have been validly issued on the terms of the issue of the shares.

DIVISION II—ISSUE OF SECURITIES

Disclosure statement required in relation to issue of securities

41. (1) A building society must not—

(a) offer to the public for subscription or purchase;

(b) invite the public to subscribe for or purchase;

or

(c) issue to the public,

any securities, whether or not being securities of the building society, unless the building society has—

(d) first registered with the Commission a disclosure statement relating to the securities;

and

- (e) when issuing any form of application for the securities, or any form that is to accompany money lodged on deposit or loan prior to the issue of the securities, attached to that form a copy of the disclosure statement as registered by the Commission.

Penalty: Division 4 fine or division 4 imprisonment.

(2) A person other than the building society must not—

- (a) offer to the public for subscription or purchase;
- (b) invite the public to subscribe for or purchase;

or

- (c) issue to the public,

any securities of a building society unless—

- (d) a disclosure statement relating to the securities has first been registered with the Commission by the building society;

and

- (e) when issuing any form of application for the securities, or any form that is to accompany money lodged on deposit or loan prior to the issue of the securities, there is attached to that form a copy of the disclosure statement as registered by the Commission.

Penalty: Division 4 fine or division 4 imprisonment.

(3) For the purposes of this Division, if forms that are the same or substantially the same are issued to the public or are issued to any section of the public, whether selected as clients of the person issuing the forms or in any other manner, each of the forms is to be taken to be issued to the public notwithstanding that each form may be used only by the person to whom it is issued, but forms are not to be taken to be issued to the public—

- (a) by reason only that they are issued to persons whose ordinary business is to buy or sell securities, whether as principal or agent;

or

- (b) in any case or circumstances of a prescribed kind.

(4) Subsections (1) and (2) do not apply—

- (a) in relation to any offer or invitation if a prospectus or statement is registered or is required to be registered by the Commission for the purposes of Division 1 or 6 of Part IV of the *Companies (South Australia) Code* in relation to the offer or invitation;

or

(b) in any case or circumstances of a prescribed kind.

(5) The Commission must not register a disclosure statement unless—

(a) the disclosure statement complies with the requirements of the regulations as to its form and the information and reports to be incorporated in it and is otherwise approved by the Commission as to its form and contents;

(b) there are also lodged with the Commission copies, verified by statements in writing, of any consents required by this section to the issue of the disclosure statement and of all material contracts referred to in the disclosure statement or, in the case of such a contract not reduced to writing, a memorandum giving full particulars of the contract, verified by a statement in writing;

and

(c) the Commission is of the opinion that the disclosure statement does not contain any statement or matter that is false in a material particular or is materially misleading in the form or context in which it appears.

(6) A building society in respect of which a disclosure statement has been registered under this section must cause a true copy of the disclosure statement and every document referred to in subsection (5)(b) to be deposited, within seven days after registration of the disclosure statement, at the registered office of the building society and must keep each such copy available for a period of at least six months after registration of the disclosure statement for the inspection of any person without charge.

(7) A building society or other person must not issue a disclosure statement that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless—

(a) the expert has consented in writing to the issue of the disclosure statement with that statement included in the form and context in which it is included and has not withdrawn that consent before the disclosure statement is issued;

and

(b) there appears in the disclosure statement a statement that the expert has given, and has not withdrawn, that consent.

(8) Where a disclosure statement—

(a) includes any statement—

(i) that is false;

or

(ii) that is misleading in the form or context in which it is included;

or

- (b) omits any matter or thing that is required to be included,

any person who authorized or caused the disclosure statement to be issued is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(9) It is a defence to a charge of an offence against subsection (8) if the defendant proves—

- (a) that the statement or omission was immaterial;
- (b) that he or she had reasonable grounds to believe, and did at the time of the issue of the disclosure statement believe, that the statement was not false or misleading or that the omission was immaterial;

or

- (c) in the case of an omission—that the omission was inadvertent.

(10) For the purposes of subsection (8)—

- (a) a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document;

and

- (b) a person is not to be taken to have authorized or caused the issue of a disclosure statement by reason only of the fact that the person consented to its issue as required under subsection (7).

(11) A building society or other person must not issue securities, and an officer of a building society must not authorize or permit securities to be issued, on the basis of a disclosure statement after the expiration of six months from the issue of the disclosure statement.

Civil liability with respect to disclosure statements

42. (1) Subject to this section, where a disclosure statement is issued by a building society or other person, a person who—

- (a) is a director of the building society at the time of the issue of the disclosure statement;

or

- (b) authorized or caused the issue of the disclosure statement,

is liable to pay compensation to any person who subscribes for or purchases securities, or lodges money on deposit or loan, on the faith of the disclosure statement for any loss or damage sustained by reason of—

(c) any statement in the disclosure statement—

(i) that is false;

or

(ii) that is misleading in the form or context in which it is included;

or

(d) any omission from the disclosure statement of any matter or thing that was required to be included and of which he or she had knowledge and knew to be material.

(2) Notwithstanding anything in subsection (1), an expert whose consent to the issue of a disclosure statement is required and who has given that consent is not, by reason only of having given that consent, liable under subsection (1) as a person who has authorized or caused the issue of the disclosure statement except in respect of—

(a) a false or misleading statement in the disclosure statement purporting to be made by him or her as an expert;

or

(b) an omission from the disclosure statement of any material matter or thing for which he or she is responsible in his or her capacity or purported capacity as an expert.

(3) For the purposes of subsection (1), a statement is to be regarded as part of a disclosure statement if it is contained in any report or memorandum that appears on the face of, or is issued with, the disclosure statement, or is incorporated by reference in the disclosure statement, whether the reference occurs in the disclosure statement or in any other document.

(4) Subject to subsection (5), a person other than a person to whom subsection (6) applies, is not liable under subsection (1) if he or she proves—

(a) that the disclosure statement was issued without his or her knowledge or consent and—

(i) when first aware of the issue of the disclosure statement, he or she forthwith gave reasonable public notice that it was issued without his or her knowledge;

or

(ii) he or she gave reasonable public notice that the disclosure statement was issued without his or her consent forthwith after it was issued,

as the case may be;

(b) that, after the issue of the disclosure statement, and before any securities to which the disclosure statement related were issued, he or she, on becoming aware of any false or misleading statement in the disclosure statement, withdrew his or her consent to the issue of the disclosure statement and gave reasonable public notice of the withdrawal and of the reason for the withdrawal;

or

(c) that—

- (i) as regards every false or misleading statement not purporting to be made on the authority of an expert or of a public official document or statement, he or she had reasonable grounds to believe, and did until the time of the issue of securities believe, that the statement was true and not misleading;
- (ii) as regards every false or misleading statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert—
 - (A) it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation;

and

- (B) he or she had reasonable grounds to believe, and did until the time of the issue of the disclosure statement believe, that the person making the statement was competent to make it and that the person had given the consent required by this Division to the issue of the disclosure statement and had not withdrawn that consent before the issue of the disclosure statement, or, to his or her knowledge, before any, securities to which the disclosure statement related were issued;

and

- (iii) as regards every false or misleading statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

(5) Subsection (4) does not apply in the case of a person who is liable, as a person who authorized or caused the issue of a disclosure statement by giving a consent required under this Division, in respect of a false or misleading statement purporting to have been made by him or her as an expert.

(6) A person who, apart from this subsection, would under subsection (1) be liable, as a person who authorized or caused the issue of a disclosure statement by giving a consent required under this Division, in respect of a false or misleading statement purporting to be made by him or her as an expert is not so liable if he or she proves—

- (a) that, having given his or her consent under this Division to the issue of the disclosure statement, he withdrew it in writing before the disclosure statement was issued;

- (b) that, after the disclosure statement was issued and before any securities to which the disclosure statement related were issued, he or she, on becoming aware of the false or misleading statement, withdrew his or her consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal;

or

- (c) that he or she was competent to make the statement and had reasonable grounds to believe, and did until the time of the issue of securities to which the disclosure statement related believe, that the statement was true and not misleading.

(7) Where—

- (a) a disclosure statement contains the name of a person as an officer of the building society and the person has not authorized or consented to the issue of the disclosure statement;

or

- (b) the consent of a person is required under this Division to the issue of a disclosure statement and the person has not given that consent or has withdrawn it before the issue of the disclosure statement,

the officers of the building society, except any without whose knowledge or consent the disclosure statement was issued, and any other person who authorized or caused the issue of the disclosure statement are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which he or she may be made liable—

- (c) by reason of his or her name having been so inserted in the disclosure statement;
- (d) by reason of the inclusion in the disclosure statement of a statement purporting to be made by him or her as an expert;

or

- (e) in defending any action or other legal proceeding brought against him or her by reason of his or her name having been so inserted in the disclosure statement or the inclusion in the disclosure statement of such a statement.

Documents acknowledging deposits or loans pursuant to public offer, etc.

43. (1) Subject to this section, where pursuant to—

- (a) an offer made to the public to accept money on deposit or loan;

or

- (b) an invitation issued to the public to lodge money on deposit or loan,

a building society accepts money on deposit or loan from a person, the building society must, within two months after accepting the money, issue to that person a document that—

(c) acknowledges, evidences or constitutes an acknowledgment of the indebtedness of the building society in respect of that deposit or loan;

and

(d) complies with the requirements of the regulations.

(2) Subsection (1) does not apply—

(a) in relation to any offer or invitation if a prospectus or statement is registered or is required to be registered by the Commission for the purposes of Division 1 or 6 of Part IV of the *Companies (South Australia) Code* in relation to the offer or invitation;

or

(b) in any case or circumstances of a prescribed kind.

Issuing of certain securities at a discount prohibited

44. A building society must not issue permanent shares or other securities of a prescribed class at a discount.

Securities other than permanent shares to be fully paid-up and in consideration of cash

45. A building society must not issue any securities other than permanent shares as partly paid-up and except in consideration of the payment of cash.

Regulations governing offers, issues, etc., of securities to public

46. (1) The regulations may regulate or make provision with respect to securities the subject of any public offer, invitation or issue by a building society and the making of any such offer, invitation or issue, and, without limiting the effect of the foregoing, may regulate or make provision with respect to—

(a) the form and contents of disclosure statements;

(b) the publication and contents of notices, advertisements and reports relating to such securities;

(c) trust deeds relating to or securing such securities;

(d) information, records or returns to be kept or furnished in relation to such securities and the holders of such securities.

(2) The regulations may prescribe penalties, not exceeding a division 4 fine or division 4 imprisonment, for breach of, or non-compliance with, a regulation made pursuant to this section or for the purposes of this Division.

Power of Commission to exempt

47. (1) The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with all or any of the provisions of this Division (other than section 44 or 45) or any regulations made for the purposes of or pursuant to this Division.

(2) Without limiting the generality of subsection (1), an exemption under that subsection may relate to particular securities or to securities included in a class of securities.

(3) A person must not contravene or fail to comply with a condition to which an exemption under subsection (1) is subject.

(4) Where a person has contravened or failed to comply with a condition to which an exemption under subsection (1) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

(5) The Commission may, by instrument in writing, declare that a provision of this Division (other than section 44 or 45), or a regulation made for the purposes of or pursuant to this Division, has effect in its application to or in relation to a particular person or particular persons—

(a) in a particular case;

or

(b) in relation to particular securities or securities included in a particular class of securities,

as if the provision or regulation were omitted or modified or varied in a manner specified in the instrument and, where such a declaration is made, that provision or regulation has effect accordingly.

(6) The Commission must cause a copy of an instrument executed under this section to be published in the *Gazette*, but failure of the Commission to do so does not affect the validity of the instrument.

DIVISION III—PERMANENT SHARES

Application of Division

48. This Division applies only in relation to permanent shares in a building society.

Allotment of shares otherwise than for cash

49. (1) A building society must not allot shares as fully or partly paid-up otherwise than in consideration of payment in cash unless the building society has obtained a report from an expert, signed by the expert and stating—

(a) what, in his or her opinion, is the money value at the time of the signing of the report of the consideration given in respect of the shares;

(b) whether or not, in his or her opinion, the consideration is fair and reasonable as at that time and the reasons for that opinion;

(c) particulars of any relationship that he or she has with the building society or an associate of the building society;

(d) particulars of any pecuniary or other interest that he or she has that could reasonably be regarded as being capable of affecting his or her ability to give an unbiased report;

and

- (e) particulars of any fee or pecuniary or other benefit, whether direct or indirect, that he or she has received, or will or may receive, for or in connection with the making of the report.

(2) A copy of a report under subsection (1) must—

- (a) if a disclosure statement is required to be issued under this Part in respect of the shares in question—be incorporated by the building society in the disclosure statement;

or

- (b) in any other case—be lodged with the Commission by the building society not less than seven days before the shares are allotted.

(3) A building society must, if it has obtained the opinions of more than one expert for the purposes of this section, append to any report that is dealt with in accordance with subsection (2) a statement setting out, in relation to each of those experts (other than the one who signed the report)—

- (a) the name of the expert;

and

- (b) particulars of the opinions (if any) expressed by the expert on the matters on which an expert's opinion is required for the purposes of this section.

Power to exempt in relation to non-cash consideration

50. (1) The Commission may, by notice in writing, exempt a building society, conditionally or unconditionally, from a requirement of section 49.

(2) The Commission may, on non-compliance with a condition of an exemption under this section, by instrument in writing, revoke the exemption.

Differences in calls, reserve liability, etc.

51. (1) A building society may, if so authorized by its rules—

- (a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

and

- (b) accept from a member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up.

(2) A building society may, by special resolution, determine that any portion of its share capital that has not been already called up is not capable of being called up except in the event and for the purposes of the building society being wound up, and in that event that portion of the building society's share capital is not capable of being called up except in the event and for the purposes of the building society being wound up, but no such resolution prejudices any rights acquired by a person before the passing of the resolution.

Calls and effect of non-compliance with calls on shares

52. (1) Calls on shares in a building society must be so made that they are payable not less than 14 days from the day on which the call is made, and no subsequent call may be made until after the expiration of seven days from the day on which the call made immediately before it is payable.

(2) When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment must, not less than seven days before that day, be sent by post to the holder of shares on which the call is made.

(3) Where a call on a share is not paid on or before the day for its payment, the shareholder is not entitled—

(a) to a dividend on the share;

or

(b) to a vote in any meeting of members of the building society.

(4) Where a call on a share is unpaid at the expiration of 14 days after the day for its payment, the share may be forfeited by resolution of the board of the building society.

Sale of shares forfeited for non-payment of call

53. (1) Shares forfeited by a building society for non-payment of a call must be offered for sale by auction not more than six weeks after the date of their forfeiture.

(2) The sale must, not less than 14 and not more than 21 days before the day appointed for the sale, be advertised on two separate days in a newspaper circulating generally in the State and, where the building society is carrying on business as a building society in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory.

(3) Where a sale is not held owing to error or inadvertence, the sale, if it is held in due course as soon as practicable after the discovery of the error or inadvertence, is not invalid.

(4) At any such sale, a share forfeited for non-payment of any call may, if the building society in accordance with its rules or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of the amount paid up on the share at the time of forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the date of the sale.

(5) The proceeds of the sale must be applied in payment of—

(a) first, the expenses of the sale;

(b) second, any expenses necessarily incurred in respect of the forfeiture;

and

(c) third, the calls then due and unpaid,

and the balance (if any) must be paid to the member whose share has been so sold on delivery to the building society of the share certificate that relates to the forfeited share.

(6) The board of the building society may, in the case of a share advertised for sale as forfeited for non-payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.

(7) If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale.

(8) A share so withdrawn from sale or a share for which no bid is received at the sale must be held by the board in trust for the building society and must be disposed of in such manner as the building society, in accordance with its rules or by resolution, determines.

(9) Unless otherwise specifically provided by resolution, the shares to be so disposed of must first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

(10) A call does not have any effect on any forfeited share that is held by or in trust for the building society pursuant to this section, but such a share, when it is reissued or sold by the building society, may be credited as paid up to such amount as the building society, in accordance with its rules or by resolution, determines.

(11) When forfeited shares are sold for non-payment of any call, the sale is valid although the specific numbers of the shares are not advertised.

(12) In every advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

(13) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale or from any date to which the sale has been duly postponed, but so that no such intended sale may be postponed to a date more than 90 days from the first date fixed for the intended sale.

(14) The date to which the sale is postponed must, in respect of every postponement, be advertised in the same manner as is required under subsection (2).

(15) On the day immediately before the day appointed for the sale of a forfeited share, the registered office of the building society must be open and accessible to the public during ordinary office hours.

(16) If there is any failure to comply with the provisions of this section, the building society is guilty of an offence.

Redemption of shares forfeited for non-payment of call

54. (1) If a share belonging to a person has been forfeited for non-payment of a call, the person may, at any time up to or on the day immediately before the day on which it is intended to sell the share, redeem the share by payment to the building society of—

(a) all calls due on the share;

and

(b) if the building society so requires—

(i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the building society in respect of the forfeiture;

and

(ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

(2) On such a payment, the person is entitled to the share as if the forfeiture had not been incurred.

Prohibition of allotment unless minimum subscription received

55. (1) A building society must not make an allotment of shares in the building society that have been offered to the public or in respect of which an invitation has been issued to the public unless—

(a) the minimum subscription (if any) has been subscribed;

and

(b) the sum payable on application for the shares so subscribed has been received by the building society.

(2) For the purposes of subsection (1), where a building society has received a cheque or payment order for the sum payable on application for an allotment of shares in the building society, the sum is not to be taken to have been received by the building society until the cheque is paid by the bank on which it is drawn or payment is made in accordance with the order.

(3) In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, an amount equal to the sum of—

(a) the nominal value of the share;

and

(b) if the share is, or is to be, issued at a premium—the amount of the premium payable on the share,

less any amount payable otherwise than in cash is to be taken to have been subscribed in relation to each share for the allotment of which an application has been made.

(4) If the conditions referred to in subsection (1) have not been satisfied on the expiration of four months after the issue of the disclosure statement, the building society must repay, in accordance with the succeeding provisions of this section, all money received from applicants for shares.

(5) Where a building society is liable, under subsection (4), to repay money received from applicants for shares—

(a) the money must be repaid without interest within seven days after the building society becomes so liable;

and

(b) if the money is not repaid within seven days after the building society becomes so liable—

(i) the directors of the building society are, subject to subsection (6), jointly and severally liable to repay the money with interest at the prescribed rate calculated from the expiration of the period of seven days;

and

(ii) each director of the building society is guilty of an offence.

(6) A director of a building society is not liable under subsection (5)(b)(i), and is not guilty of an offence against subsection (5)(b)(ii), if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on his or her part.

(7) An allotment made by a building society to an applicant in contravention of the provisions of this section is voidable at the option of the applicant and is so voidable notwithstanding that the building society is in the course of being wound up.

(8) An option referred to in subsection (7) is exercisable by notice in writing served on the building society within one month after the date of the allotment.

(9) A director of a building society who knowingly contravenes, or permits or authorizes the contravention of, any of the provisions of this section is guilty of an offence and is liable, in addition to the penalty for the offence, to compensate the building society and any person to whom an allotment has been made in contravention of this section respectively for any loss, damages or costs that the building society or the person has sustained or incurred by reason of the allotment, but no proceedings for the recovery of any such compensation may be commenced after the expiration of two years from the date of the allotment.

(10) Any condition requiring or binding an applicant for shares to waive compliance with any requirement of this section, or purporting to do so, is void.

Return as to allotments

56. (1) Where a building society makes an allotment of its shares, the building society must, within one month after the allotment is made, lodge with the Commission a return in the prescribed form stating—

- (a) the number and nominal values of the shares comprised in the allotment;
- (b) the amount (if any) paid or due and payable on the allotment of each share;
- (c) where the capital of the building society is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs;

and

- (d) subject to subsection (2), the full name, or the surname and at least one Christian or given name and other initials, and the address of each of the allottees and the number and class of shares allotted to that person.

(2) The particulars referred to in subsection (1)(d) need not be included in a return in relation to shares that have been allotted in consideration of the payment of money.

(3) Where shares in a building society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made pursuant to a contract in writing, the building society must lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of any such contract.

(4) If a certified copy of a contract is lodged in accordance with subsection (3), the original contract duly stamped must be produced at the same time to the Commission.

(5) Where shares in a building society are allotted as fully or partly paid-up otherwise than in consideration of the payment of money and the allotment is made—

- (a) pursuant to a contract not reduced to writing;
- (b) pursuant to a provision in the rules of the building society;
- (c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders;

or

- (d) pursuant to the application of money held by the building society in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled,

the building society must lodge with the return a statement containing such particulars as are prescribed.

(6) For the purposes of this section, any shares in a building society applied for prior to the registration of the building society are to be taken to have been allotted on the date of registration of the building society.

Restriction on application of capital

57. (1) Except as provided by section 58, a building society must not apply any of its shares or capital money either directly or indirectly in making a payment to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the building society, whether the shares are or the money is so applied by being added to the purchase price of property acquired by the building society or to the contract price of work to be executed for the building society or the money is paid out of the nominal purchase price or contract price or otherwise.

(2) If a building society contravenes this section, the building society is not guilty of an offence against this Act but each officer of the building society who is in default is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(3) Where—

(a) a person is convicted of an offence against this section in relation to a building society;

and

(b) the court by which the person is convicted is satisfied that the building society has suffered loss or damage as a result of the act that constituted the offence,

the court may, in addition to imposing a penalty, order the convicted person to pay compensation to the building society of such amount as that court specifies.

(4) Where a contravention of this section takes place—

(a) if a person other than the building society concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the building society may, whether or not that person or any other person has been convicted of an offence against subsection (2) in relation to that contravention, recover from the person as a debt due to the building society by action in any court of competent jurisdiction an amount equal to the profit;

and

(b) where the building society concerned has suffered loss or damage as a result of the contravention—the building society may recover an amount equal to the loss or damage from any person who is in default, whether or not that person or any other person has been convicted of an offence against subsection (2) in relation to that contravention, as a debt due to the building society by action in any court of competent jurisdiction.

Power to make certain payments

58. (1) Subject to subsection (2), a building society may make a payment by way of brokerage or commission to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the building society or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the building society if, and only if—

- (a) the payment is not prohibited by the rules of the building society;
- (b) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in a disclosure statement or prospectus issued in respect of the shares or, if there is no such disclosure statement or prospectus, in a statement lodged with the Commission before the building society becomes liable to make the payment;

and

- (c) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in that disclosure statement, prospectus or statement.

(2) Subsection (1) does not permit a building society to make a payment by way of brokerage or commission in respect of shares in the building society if the amount of the payment, or, if another payment or other payments by way of brokerage or commission has or have been made by the building society in respect of those shares, the sum of the amount of the first mentioned payment and the other payment or payments, exceeds—

- (a) 10 per cent of the total of the amount payable in respect of the shares on their allotment;

or

- (b) such amount (if any), or an amount calculated at such rate (if any), as is authorized by the rules of the building society, whichever is the lesser.

(3) A vendor to, promoter of, or person who receives payment in money or shares from, a building society may apply any part of the money or shares so received in making any payment that would, if it were made directly by the building society, be lawful under this section.

Issue of shares at premium

59. (1) Where a building society issues shares for which a premium is received by the building society, whether in money or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares must be transferred to an account to be called the "share premium account", and the provisions of this Part relating to the reduction of the share capital of a building society apply, subject to this section, as if the share premium account were paid-up share capital of the building society.

(2) The share premium account may be applied—

- (a) in paying up shares to be issued to members of the building society as fully paid bonus shares;

(b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the building society;

(c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the building society;

or

(d) in writing off the preliminary expenses of the building society.

Special resolution for reduction of share capital

60. (1) Subject to confirmation by the Court, a building society may, if so authorized by its rules, by special resolution reduce its share capital in any way and in particular, without limiting the effect of the foregoing, may do all or any of the following:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) cancel any paid-up share capital that is lost or is not represented by available assets;

or

(c) pay off any paid-up share capital that is in excess of the needs of the building society.

(2) Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs—

(a) every creditor of the building society who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of commencement of the winding up of the building society, would be admissible in proof against the building society, is entitled to object to the reduction;

(b) the Court, unless satisfied on affidavit that there are no such creditors, must settle a list of the names of creditors entitled to object and, for that purpose, must ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered;

and

(c) where a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not determined, does not consent to the reduction, the Court may dispense with the consent of that creditor on the building society securing payment of his or her debt or claim by appropriating as the Court directs—

(i) if the building society admits the full amount of the debt or claim or, though not admitting it, is willing to provide for it—the full amount of the debt or claim;

or

- (ii) if the building society does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after inquiry and adjudication of the kind required where a building society is wound up by the Court.

(3) The Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of subsection (2) do not apply in respect of creditors included in a class of creditors.

(4) The Court may, if satisfied with respect to each creditor who under subsection (2) is entitled to object, that—

- (a) the creditor's consent to the reduction has been obtained;
- (b) the creditor's debt has been discharged or secured;

or

- (c) the creditor's claim has determined or has been secured,

make an order confirming the reduction on such terms and conditions as it thinks fit.

(5) A building society must not act on a resolution for the reduction of share capital before application is made to the Commission for registration of the resolution and an office copy of the order of the Court is lodged with the Commission but such a resolution may specify an earlier date (but being not earlier than the date of the resolution) as the date from which the reduction of capital is to have effect.

(6) A certificate of the Commission stating that the resolution and an office copy of the order made under subsection (4) have been registered by the Commission is conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with in respect of the building society.

(7) A member of a building society, past or present, is not liable in respect of any share in the building society to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by an order made under subsection (4) and the amount paid, or the reduced amount (if any) that is deemed to have been paid, on the share (as the case may be) but, notwithstanding any other provision of this Act, where the name of a creditor who is entitled under subsection (2) to object to a reduction is, by reason of his or her ignorance of the proceedings for reduction or of their nature and effect with respect to his or her claim, not entered on the list of creditors, and after the reduction the building society is unable, within the meaning of the provisions with respect to winding up by the Court, to pay the amount of his or her debt or claim—

- (a) every person who was a member of the building society at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that he or she would have been liable to contribute if the building society had commenced to be wound up on the day before that date;

and

- (b) if the building society is wound up, the Court, on the application of any such creditor and proof of his or her ignorance of the proceedings for reduction or of their nature and effect with respect to his or her claim, may, if it thinks fit, settle accordingly a list of the names of persons liable to contribute by reason of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up,

but nothing in this subsection affects the rights of the contributories among themselves.

(8) An officer of a building society who—

- (a) knowingly conceals the name of a creditor entitled to object to a reduction in the share capital of the building society;

or

- (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor of the building society,

is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(9) The granting, pursuant to the rules of a building society, of a lease, licence or other right to occupy or use land or a building, or a part of land or a building, in favour of a member of the building society by virtue of the person's membership does not constitute a reduction of the share capital of the building society.

Building society financing dealings in its shares, etc.

61. (1) Except as otherwise expressly provided by this Act, a building society must not—

- (a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with—

- (i) the acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of shares in the building society;

or

- (ii) the proposed acquisition by any person of shares in the building society;

- (b) whether directly or indirectly, in any way, acquire shares in the building society;

or

- (c) whether directly or indirectly, in any way, lend money on the security of shares in the building society.

(2) A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

(3) For the purposes of this section, a building society is to be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition (in this subsection referred to as the "relevant purpose") if—

(a) the building society gave the financial assistance for purposes that included the relevant purpose;

and

(b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

(4) For the purposes of this section, a building society is to be taken to have given financial assistance in connection with an acquisition or proposed acquisition if, when the financial assistance was given to a person, the building society was aware that the financial assistance would financially assist—

(a) the acquisition by a person of shares in the building society;

or

(b) where shares in the building society had already been acquired—the payment by a person of any unpaid amount of the subscription payable for the shares or of any premium payable in respect of the shares, or the payment of any calls on the shares.

(5) If a building society contravenes subsection (1), the building society is not guilty of an offence but each officer of the building society who is in default is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(6) Where—

(a) a person is convicted of an offence against subsection (5);

and

(b) the court by which he or she is convicted is satisfied that the building society or another person has suffered loss or damage as a result of the contravention that constituted the offence,

that court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the building society or other person, as the case may be, of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

(7) The power of a court under section 210 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (6) of this section from the liability to have such an order made against him or her.

(8) Nothing in subsection (1) prohibits—

- (a) the payment of a dividend by a building society in good faith and in the ordinary course of commercial dealing;
- (b) a payment made by a building society pursuant to a reduction of capital in accordance with this Part;
- (c) the discharge by a building society of a liability of the building society that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;
- (d) an acquisition by a building society of an interest (other than a legal interest) in fully paid shares in the building society where no consideration is provided by the building society, or by any corporation that is related to the building society, for the acquisition;
- (e) the purchase by a building society of shares in the building society pursuant to an order of a court;
- (f) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a building society of a lien on shares in the building society (other than fully paid shares) for any amount payable to the building society in respect of the shares;

or

- (g) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a building society with a subscriber for shares in the building society permitting the subscriber to make payments for the shares (including payments in respect of any premium) by instalments,

but nothing in this subsection—

- (h) is to be construed as implying that a particular act of a building society would, but for this subsection, be prohibited by subsection (1);

or

- (i) is to be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a building society, the acquisition of shares by a building society or the lending of money by a building society on the security of shares.

(9) Nothing in subsection (1) prohibits—

- (a) the making of a loan, the giving of a guarantee or the provision of security by a building society in the ordinary course of its ordinary business where the loan that is made by the building society, or in respect of which the guarantee or security is given or provided, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise;

or

- (b) the giving by a building society of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of fully paid shares in the building society to be held by or for the benefit of participating employees in a scheme approved by the building society at a general meeting for assisting such acquisitions where the financial assistance is given in accordance with that scheme.

(10) Nothing in subsection (1) prohibits the giving by a building society of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares in the building society if—

- (a) the building society does so in accordance with a special resolution passed by the building society;
- (b) the notice of the proposed special resolution given to members of the building society sets out—
 - (i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance;

and

- (ii) the effect that the giving of the financial assistance would have on the financial position of the building society and any group for which the building society is the holding building society,

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than two directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the building society (including future liabilities and contingent liabilities), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the building society or any class of those creditors or members;

- (c) not later than the day next following the day when the notice referred to in paragraph (b) is dispatched to members of the building society there is lodged with the Commission a copy of that notice and a copy of the statement that accompanied that notice;
- (d) within 21 days after the general meeting of the building society at which the special resolution is passed a notice—
 - (i) setting out the terms of the special resolution;

and

- (ii) stating that any of the persons referred to in subsection (12) may, within the period referred to in that subsection, make an application to the Court opposing the giving of the financial assistance,

is published, in each State and Territory in which the building society is carrying on business, in a daily newspaper circulating generally in that State or Territory;

and

- (e) no application opposing the giving of the financial assistance is made within the period referred to in subsection (12) or, if such an application is made, the application is withdrawn or the Court approves the giving of the financial assistance.

(11) Where, on application to the Court by a building society, the Court is satisfied that the provisions of subsection (10) have been substantially complied with by the building society in relation to proposed financial assistance of a kind mentioned in that subsection, the Court may, by order, declare that the provisions of that subsection have been complied with in relation to the proposed financial assistance.

(12) Where a special resolution is passed by a building society, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in subsection (10)(d), by—

- (a) a member or creditor of the building society;
- (b) a member or creditor of a subsidiary of the building society;

or

- (c) the Commission.

(13) On an application under subsection (12), the Court—

- (a) must, in determining what order or orders to make in relation to the application, have regard to the rights and interests of the members of the building society or of any class of them as well as to the rights and interests of the creditors of the building society or of any class of them;
- (b) may not make an order approving the giving of the financial assistance unless the Court is satisfied that—
 - (i) the building society has disclosed to the members of the building society all material matters relating to the proposed financial assistance;

and

- (ii) the proposed financial assistance would not, after taking into account the financial position of the building society (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the building society or of any class of those creditors or members;

and

(c) may do all or any of the following:

- (i) if it thinks fit, make an order for the purchase by the building society of the interests of dissentient members of the building society;
- (ii) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the building society or by a subsidiary of the building society) of the interests of dissentient members;
- (iii) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;
- (iv) make an order disapproving the giving of the financial assistance or, subject to this section, an order approving the giving of the financial assistance.

(14) Where the Court makes an order under this section in relation to a building society, the building society must, within 14 days after the order is made, lodge with the Commission an office copy of the order.

(15) The passing of a special resolution by a building society, or with respect to financial assistance, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the building society of any duty to the building society under this Act or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

(16) A reference in this section to an acquisition or proposed acquisition of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

Consequences of building society financing dealings in its shares, etc.

62. (1) Except as provided by this section—

- (a) the validity of a contract or transaction is not affected by a contravention of section 61(1)(a);
- (b) the validity of a contract or transaction is not affected by a contravention of section 61(1)(b) unless the contract or transaction effects the acquisition that constitutes the contravention;

and

- (c) the validity of a contract or transaction is not affected by a contravention of section 61(1)(c) unless the contract or transaction effects the loan that constitutes the contravention.

(2) Where a building society makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid by reason that—

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 61;

or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section,

the first mentioned contract or transaction is, subject to the following provisions of this section, voidable at the option of the building society by notice in writing given to the other party, or by notices in writing given to each of the other parties, to that contract or transaction.

(3) The Court may, on the application of a member, officer or creditor of a building society, by order, authorize that person to give a notice or notices under subsection (2) in the name of the building society.

(4) Where—

(a) a building society makes or performs a contract, or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 61 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

and

(c) the Court is satisfied, on the application of the building society or of any other person, that the building society or that other person has suffered, or is likely to suffer, loss or damage as a result of—

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of section 61 or having become void, or becoming void, under this section;

or

- (iv) a related contract or transaction being void by reason of section 61 or having become void, or becoming void, under this section,

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the building society or against any person who aided, abetted, counselled or procured, or was, by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

(5) The orders that may be made under subsection (4) include—

- (a) an order directing a person to refund money or return property to the building society or to another person;
- (b) an order directing a person to pay to the building society or to another person a specified amount not exceeding the amount of the loss or damage suffered by the building society or other person;

and

- (c) an order directing a person to indemnify the building society or another person against any loss or damage that the building society or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

(6) If a certificate signed by not less than two directors, or by a director and a secretary, of a building society stating that the requirements of section 61(10) have been complied with in relation to the proposed giving by the building society of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares in the building society is given to a person—

- (a) the person to whom the certificate is given is not under any liability to have an order made against him or her under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by him or her in reliance on the certificate;

and

- (b) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 61 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

(7) Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the building society concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of section 61(10) had not been complied with in relation to the financial assistance to which the certificate related.

(8) For the purpose of subsection (7), a person is, in the absence of proof to the contrary, to be taken to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

(9) In any proceeding, a document purporting to be a certificate given under subsection (6) is, in the absence of proof to the contrary, to be taken to be such a certificate and to have been duly given.

(10) A person who has possession of a certificate given under subsection (6) is, in the absence of proof to the contrary, to be taken to be the person to whom the certificate was given.

(11) If a person signs a certificate stating that the requirements of section 61(10) have been complied with in relation to the proposed giving by a building society of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person is guilty of an offence.

Penalty: Division 7 fine or division 7 imprisonment.

(12) If a building society makes a contract or engages in a transaction under which it gives financial assistance as mentioned in section 61(1)(a) or lends money as mentioned in section 61(1)(c), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money is to be taken for the purposes of this section to be related to the first mentioned contract or transaction.

(13) The power of a court under section 210 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (4) of this section from the liability to have such an order made against him or her.

(14) Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevail.

Prohibition on subsidiary acquiring shares of holding building society

63. (1) A corporation cannot be a member of a building society that is its holding building society, and any allotment or transfer of shares in a building society to its subsidiary is void.

(2) This section does not prevent a subsidiary from continuing to be a member of its holding building society if, at the time when it becomes a subsidiary of the holding building society, it already holds shares in that holding building society, but the subsidiary must, within the period of 12 months or such longer period as the Court may allow after becoming the subsidiary of its holding building society, dispose of all of its shares in the holding building society.

(3) Subsections (1) and (2) apply in relation to a nominee for a corporation that is a subsidiary as if references in this section to such a corporation included references to a nominee for it.

(4) Subsection (1) does not apply where—

(a) the subsidiary is concerned as a personal representative;

or

(b) the subsidiary is concerned as a trustee and—

(i) the holding building society or a subsidiary of the holding building society is not beneficially interested under the trust;

or

(ii) the holding building society or a subsidiary of the holding building society is beneficially interested under the trust only by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, not being a transaction entered into with an associate of the holding building society or a subsidiary of the holding building society.

Register of options

64. (1) A building society must keep a register of options granted to persons to take up shares in the building society.

(2) The building society must, within 14 days after the grant of an option to take up shares in the building society, enter in the register the following particulars:

(a) the name and address of the holder of the option;

(b) the date on which the option was granted;

(c) the number and description of the shares in respect of which the option was granted;

(d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;

(e) the consideration (if any) for the grant of the option;

(f) the consideration (if any) for the exercise of the option or the manner in which that consideration is to be ascertained or determined;

(g) such other particulars as are prescribed.

(3) The register is *prima facie* evidence of any matters inserted in the register as required or authorized by this Act.

(4) The register must be kept open for inspection—

(a) by any member of the building society—without charge;

and

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- (b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the building society requires or, where the building society does not require the payment of an amount, without charge.

(5) A person may request a building society for a copy of the register or any part of the register and, where such a request is made, the building society must send the copy to that person—

- (a) if the building society requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the building society or within such longer period as the Commission approves;

or

- (b) in any other case—within 21 days after the request is made or within such longer period as the Commission approves.

(6) A building society must keep, at the place where the register referred to in subsection (1) is kept, a copy of every instrument by which an option to take up shares in the building society is granted and, for the purposes of subsections (4) and (5), those copies are to be taken to be part of the register referred to in subsection (1).

(7) Failure by a building society to comply with any of the provisions of this section in relation to an option does not affect any rights in respect of the option.

Options over shares

65. (1) An option granted by a building society that enables any person to take up shares in the building society after a period of five years has elapsed from the date on which the option was granted is void.

(2) Subsection (1) does not apply in a case where the holders of debentures of a building society have an option to take up shares in the building society by way of redemption of the debentures.

Numbering of shares

66. (1) Each share in a building society must be distinguished by an appropriate number.

(2) Notwithstanding subsection (1)—

- (a) if at any time all shares in a building society, are fully paid up, none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up;

or

- (b) if all shares in a building society are evidenced by certificates in accordance with section 67, each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares is required to have a distinguishing number.

DIVISION IV—TITLE TO AND TRANSFER OF SECURITIES

Certificate to be evidence of title

67. (1) A certificate issued by a building society specifying any shares held by a member of the building society is *prima facie* evidence of the title of the member to the shares.

(2) A certificate referred to in subsection (1) must be under the common seal of the building society and must state—

(a) the name of the building society;

(b) the class of the shares;

and

(c) the nominal value of the shares and the extent to which the shares are paid up.

(3) Failure to comply with this section does not affect the rights of a holder of shares.

Building society may have duplicate common seal

68. A building society may, if authorized by its rules, have a duplicate common seal, which must be a facsimile of the common seal of the building society with the addition on its face of the words "Share Seal" or "Certificate Seal" and a certificate referring to or relating to securities of the building society sealed with such a duplicate seal is to be taken to be sealed with the common seal of the building society.

Loss or destruction of certificates

69. (1) Subject to subsection (2), where a certificate or other document of title to shares, debentures or prescribed interests is lost or destroyed, the building society must, on application by the owner of the shares, debentures or prescribed interests issue a duplicate certificate or document to the owner—

(a) if the building society requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the building society or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as the Commission approves.

(2) The application must be accompanied by—

(a) a statement in writing that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made;

and

(b) an undertaking in writing that if it is found or received by the owner it will be returned to the building society.

(3) The directors of a building society may, before accepting an application for the issue of a duplicate certificate or document, require the applicant—

- (a) to cause an advertisement to be inserted in a newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the expiration of 14 days after the publication of the advertisement, to apply to the building society for a duplicate;

or

- (b) to furnish a bond for an amount equal to at least the current market value of the shares, debentures or prescribed interests indemnifying the building society against loss following the production of the original certificate or document,

or to do both those things.

Instrument of transfer

70. (1) Notwithstanding anything in its rules or in a deed relating to permanent shares, debentures or prescribed interests, a building society must not register a transfer of permanent shares, debentures or prescribed interests unless an instrument of transfer has been delivered to the building society.

(2) The instrument of transfer must—

- (a) be in writing in any usual or common form or in any other form that the directors of the building society approve;

and

- (b) be executed by or on behalf of both the transferor and the transferee.

(3) Subsection (1) does not prejudice the power of the building society to register as the holder of a security a person to whom the right to any securities issued by the building society has devolved by will or by operation of law.

(4) A transfer of shares, debentures or prescribed interests of a deceased holder made by his or her personal representative is, although the personal representative is not registered as the holder of those securities, as valid as if he or she had been so registered at the time of the execution of the instrument of transfer.

(5) Where the personal representative of a deceased holder duly constituted as such under the law in force in another State or in a Territory—

- (a) executes an instrument of transfer of shares, debentures or prescribed interests of the deceased holder to himself or herself or to another person;

and

- (b) delivers the instrument to the building society, together with a statement in writing made by him or her to the effect that, to the best of his or her knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the State and no application for such a grant will be made, being a statement made within the period of three months immediately preceding the date of delivery of the statement of the building society,

the building society must register the transfer and pay to the personal representative any dividends or other money accrued in respect of the securities up to the time of the execution of the instrument, but this subsection does not operate so as to require the building society to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the deceased holder duly constituted under the law of the State.

(6) A transfer or payment made pursuant to subsection (5) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the deceased holder duly constituted under the law of the State.

(7) For the purposes of this section, an application by a personal representative of a deceased person for registration as the holder of a security in place of the deceased person is to be taken to be an instrument of transfer effecting a transfer of the security to the personal representative.

(8) The production to a building society of a document that is, under the law of the State or under the law in force in another State or in a Territory, sufficient evidence of probate of the will, or letters of administration of the estate, of a deceased person having been granted to a person must be accepted by the building society, notwithstanding anything in its rules, or in a deed relating to its securities, as sufficient evidence of the grant.

Registration of transfer at request of transferor

71. (1) On the request in writing of the transferor of a permanent share, debenture or prescribed interest issued by a building society, the building society must enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

(2) On the request in writing of the transferor of a permanent share, debenture or prescribed interest issued by a building society, the building society must, by notice in writing, require the person having the possession, custody or control of the certificate or document evidencing title to the security and the instrument of transfer of the security or either of them to bring it or them into the office of the building society within a stated period, being not less than seven and not more than 28 days after the date of the notice, to have the certificate or document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) If a person refuses or neglects to comply with a notice given under subsection (2), the transferor may apply to the Court to issue a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(4) On appearance of a person so summoned, the Court may examine him or her on oath or affirmation and receive other evidence or, if he or she does not appear after being duly served with the summons, the Court may receive evidence in his or her absence, and, in either case, the Court may order him or her to deliver up such documents to the building society on such terms or conditions as to the Court seems fit, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

(5) Lists of certificates and other documents called in under this section and not brought in must be exhibited in the office of the building society and must be advertised in the *Gazette* and in such newspapers and at such times as the building society thinks fit.

Notice of refusal to register transfer

72. If a building society refuses to register a transfer of any permanent shares, debentures or prescribed interests issued by the building society, it must, within two months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

Remedy for refusal to register transfer or transmission

73. (1) Where a building society refuses or fails to register, or the board of a building society refuses or fails to give its approval to, a transfer or transmission of permanent shares, debentures or prescribed interests issued by the building society, the transferee or transmittee may apply to the Court for an order under this section.

(2) Where, on an application made under subsection (1), the Court is satisfied that the refusal or failure was without just cause, the Court may—

(a) order that the transfer or transmission be registered;

or

(b) make such other order as it thinks proper, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the building society or by the building society.

Certification of transfers

74. (1) The certification by a building society of an instrument of transfer of permanent shares, debentures or prescribed interests issued by the building society is to be taken as a representation by the building society to any person acting on the faith of the certification that there have been produced to the building society such documents as on the face of them show *prima facie* title to the securities in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the securities.

(2) Where a person acts on the faith of a false certification by a building society made negligently, the building society is under the same liability to him or her as if the certification had been made fraudulently.

(3) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the building society and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of permanent shares, debentures or prescribed interests comprised in the certification after the expiration of the period so limited or any extension of that period given by the building society if the instrument of transfer has not, within that period, been lodged with the building society for registration.

(4) For the purposes of this section—

- (a) an instrument of transfer is to be taken to be certificated if it bears the words "certificate lodged" or words to similar effect;
- (b) the certification of an instrument of transfer is to be taken to be made by a building society if—
 - (i) the person issuing the instrument is a person authorized to issue certificated instruments of transfer on behalf of the building society;

and

- (ii) the certification is signed by a person authorized to certificate transfers on behalf of the building society or by an officer of the building society or of a corporation so authorized;

and

- (c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) is to be taken to be signed by him or her unless it is shown that the signature or initials was not or were not placed there by him or her and was not or were not placed there by any other person authorized to use the signature or initials for the purpose of certificating transfers on behalf of the building society.

Duties of building society with respect to issue of certificates

75. (1) Within two months after the issue to any person of permanent shares, debentures or prescribed interests of a building society, the building society must—

- (a) complete and have ready for delivery to the person, all the appropriate certificates or other documents in connection with the securities unless, in the case of shares, the conditions of the issue otherwise provide;

and

- (b) unless otherwise instructed by the person, send or deliver the completed certificates or other documents to the person or, where the person has instructed the building society in writing to send them to a nominated person, to that person.

(2) Within one month after the date on which a transfer of any permanent shares, debentures or prescribed interests is lodged with a building society (other than a transfer that the building society is for any reason entitled to refuse to register and does not register) the building society must—

- (a) complete and have ready for delivery to the transferee all the appropriate certificates or other documents in connection with the transfer;

and

- (b) unless otherwise instructed by the transferee, send or deliver the completed certificates or other documents to the transferee or, where the transferee has instructed the building society in writing to send them to a nominated person, to that person.

(3) If a building society on which a notice has been served requiring the building society to make good any default in complying with the provisions of this section fails to make good the default within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates or other documents delivered to him or her, make an order directing the building society and any officer of the building society to make good the default within such time as is specified in the order, and the order may provide that all costs of and incidental to the application are to be borne by the building society or by any officer of the building society in default in such proportions as the Court thinks fit.

Exemption

76. (1) The Commission may, by notice in writing, exempt a building society, conditionally or unconditionally, from a requirement of this Division.

(2) The Commission may not grant an exemption under this section unless satisfied that the holders of securities affected by the exemption would continue to have adequate protection.

(3) The Commission may, on non-compliance with a condition of an exemption under this section, by notice in writing, revoke the exemption.

DIVISION IV—STOCK MARKET

Stock market

77. (1) A building society or other person must not establish or operate a stock market for trade in securities issued by a building society except—

(a) in accordance with the regulations;

and

(b) as authorized by the rules of the building society.

Penalty: Division 4 fine or division 4 imprisonment.

(2) No rules of a building society relating to a stock market may be registered by the Commission unless they comply with the requirements of the regulations and are, in the opinion of the Commission, otherwise appropriate.

(3) This section does not apply in relation to trade in securities of a building society on a stock market of a securities exchange within the meaning of the *Securities Industry (South Australia) Code*.

Regulations

78. (1) The regulations may regulate or make provision with respect to—

(a) the contents of the rules of building societies relating to the establishment and operation of stock markets;

and

(b) any matter relating to the establishment and operation of stock markets by or on behalf of building societies.

- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) regulate or restrict the information or advice relating to a building society stock market, or securities traded on such a stock market, that may be provided to a buyer or seller or prospective buyer or seller;
 - (b) require a building society operating a stock market to provide to buyers and sellers and prospective buyers and sellers specified information relating to the market and regulate the manner in which such information must be provided;
 - (c) require a building society operating a stock market to keep specified records and registers and to furnish to the Commission specified returns and reports relating to the market and its operation;
 - (d) authorize the Commission to prohibit trading in specified securities on a building society stock market in specified circumstances, or to suspend the operation of such a market in specified circumstances;
 - (e) prescribe penalties not exceeding a division 4 fine or division 4 imprisonment for breach of, or non-compliance with, a regulation made pursuant to this section or for the purposes of this Division.

Power of Court to require compliance with this Division

79. Where a building society or other person contravenes, or fails to comply with, any provisions of this Division or of regulations made pursuant to or for the purposes of this Division, the Court may, on the application of the Commission or a person aggrieved by the contravention or failure, make an order giving directions to the building society or other person concerning the observance of or compliance with those provisions.

Certain provisions of Securities Industry Code to apply

80. Part X and Division 4 of Part IV of the *Securities Industry (South Australia) Code* apply, with prescribed modifications, additions or exclusions, to and in relation to a stock market operated by or on behalf of a building society.

DIVISION V—REGISTER OF MEMBERS

Register and index of members

- 81.** (1) A building society must keep a register of its members and enter in that register—
- (a) the names and addresses of the members;
 - (b) the date at which the name of each person was entered in the register as a member;
 - (c) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member;
 - (d) the date of every allotment of any permanent shares to members and the number of permanent shares comprised in each allotment;

and

(e) any other prescribed information.

(2) A statement in the register of members of a building society, being a statement of the permanent shares held by a member, must—

(a) distinguish each share by its number (if any) or by the number (if any) of the certificate evidencing the member's holding;

and

(b) set out the amount paid, or agreed to be considered as paid, on the shares.

(3) For the purposes of this section, where two or more persons jointly hold shares in a building society, whether or not any of the persons holds any other shares in the building society, the persons are together to be deemed, in relation to the first mentioned shares, to be a member of the building society.

(4) Notwithstanding anything in subsection (1), a building society may keep the names and particulars relating to persons who have ceased to be members of the building society separately, and the names and particulars relating to former members need not be supplied to a person who applies for a copy of the register unless he or she specifically requests the names and particulars of former members.

(5) The register of members is *prima facie* evidence of any matters inserted in that register as required or authorized by this Act.

(6) A building society having more than 50 members must, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and must, within 14 days after the date on which any alteration is made in the register of members, make any necessary alteration in the index.

(7) The index must, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be found readily.

Inspection and closing of register

82. (1) A building society may close the register of members or part of that register for any time or times, but so that no part of the register is closed for more than 30 days in the aggregate in any calendar year.

(2) The register and index must be open for inspection—

(a) by any member of the building society—without charge;

and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the building society requires or, where the building society does not require the payment of an amount, without charge.

(3) A person may request a building society to furnish him or her with a copy of the register or any part of the register (but only so far as it relates to names, addresses, number of permanent shares held and amounts paid on those shares) and, where such a request is made, the building society must send the copy to that person—

(a) if the building society requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the building society or within such longer period as the Commission approves;

or

(b) in any other case—within 21 days after the request is made or within such longer period as the Commission approves.

(4) If default is made in complying with subsection (2) or (3), the building society is guilty of an offence.

Power of court to rectify register

83. (1) If—

(a) an entry is omitted from the register;

(b) an entry is made in the register without sufficient cause;

(c) an entry wrongly exists in the register;

(d) there is an error or defect in an entry in the register;

or

(e) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member,

the person aggrieved, any member or the building society may apply to the Court for rectification of the register, and the Court may refuse the application or may order rectification of the register and payment by the building society of any damages sustained by any party to the application.

(2) On an application under subsection (1), the Court may decide—

(a) any question relating to the right of a person who is a party to the application to have his or her name entered in or omitted from the register, whether the question arises between—

(i) a member or alleged member on the one hand and another member or alleged member on the other hand;

or

(ii) a member or alleged member on the one hand and the building society on the other hand;

and

- (b) generally any question necessary or expedient to be decided with respect to the rectification of the register.

(3) Where a building society is required by this Act to lodge a return containing a list of its members with the Commission, the Court, when making an order for rectification of the register, must by its order direct a notice of the rectification to be so lodged.

Trustee, etc., may be registered as owner of shares

84. (1) A trustee, executor or administrator of the estate of a deceased person who was registered as the holder of a share in a building society may be registered as the holder of that share as the trustee, executor or administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if the share had remained registered in the name of the deceased person and is not subject to any other liabilities in respect of that share.

(2) A trustee, executor or administrator of the estate of a deceased person who was entitled in equity to a share in a building society, may, with the consent of the building society and of the registered holder of that share, be registered as the holder of the share as trustee, executor or administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if that share had been registered in the name of the deceased person and is not subject to any other liabilities in respect of that share.

(3) Where—

- (a) a person is appointed, under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this subsection referred to as the "incapable person");

and

- (b) the incapable person is registered as the holder of a share in a building society,

the first mentioned person may be registered as the holder of that share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if that share had remained registered in the name of the incapable person and is not subject to any other liabilities in respect of that share.

(4) Where—

- (a) a person is appointed, under a law relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable (in this subsection referred to as the "incapable person");

and

- (b) the incapable person is entitled in equity to a share in a building society,

the first mentioned person may, with the consent of the building society and of the registered holder of that share, be registered as the holder of the share as administrator of that estate and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if that share had been registered in the name of the incapable person and is not subject to any other liabilities in respect of that share.

(5) Where—

- (a) by reason of the operation of the *Bankruptcy Act 1966* of the Commonwealth, a share in a building society, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy;

and

- (b) the bankrupt is registered as the holder of that share,

the Official Trustee in Bankruptcy may be registered as the holder of that share as Official Trustee in Bankruptcy and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if that share had remained registered in the name of the bankrupt and is not subject to any other liabilities in respect of that share.

(6) Where—

- (a) by reason of the operation of the *Bankruptcy Act 1966* of the Commonwealth, a share in a building society, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy;

and

- (b) the bankrupt is entitled in equity to that share,

the Official Trustee in Bankruptcy may, with the consent of the building society and of the registered holder of that share, be registered as the holder of that share as Official Trustee in Bankruptcy and is, in respect of that share, subject to the same liabilities as those to which he or she would have been subject if that share had been registered in the name of the bankrupt and is not subject to any other liabilities in respect of that share.

(7) Shares in a building society held by a trustee in respect of a particular trust may, with the consent of the building society, be marked in the register in such a way as to identify them as being held in respect of the trust.

(8) Except as provided in this Act, no notice of any trust, whether express, implied or constructive, may be entered on the register or be receivable by the Commission and no liabilities are affected by anything done pursuant to this Division and the building society concerned is not affected with notice of any trust by anything so done.

DIVISION VI—REGISTRATION OF CHARGES

Interpretation and application of division

85. (1) In this Division and in schedule 2, unless the contrary intention appears—

"document of title" means a document—

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land;

or

(b) authorizing or purporting to authorize, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land,

and includes—

(c) a bill of lading;

(d) a warehousekeeper's certificate;

(e) a wharfinger's certificate;

(f) a warrant or order for the delivery of goods;

or

(g) a document that is, or evidences title to, a marketable security:

"present liability", in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met:

"prospective liability", in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability:

"Register" means the Register of Building Society Charges kept by the Commission pursuant to this Division:

"registrable charge" means a charge to and in relation to which, by virtue of section 86, the provisions of this Division mentioned in section 86(1) apply.

(2) In this Division and in schedule 2, unless the contrary intention appears, a reference to property of a building society includes a reference to property held by the building society as trustee.

(3) A charge referred to in section 88 is, until the charge is registered, to be treated for the purposes of this Division and schedule 2 as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(4) The registration of a charge referred to in section 88 does not prejudice any priority that would have been accorded to the charge under any other law if the charge had not been registered.

(5) For the purposes of this Division and schedule 2, a notice or other document is to be taken to be lodged with the Commission when it is received at the office of the Commission by an officer authorized to receive it.

Charges required to be registered

86. (1) Subject to this section, the provisions of this Division relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply to and in relation to the following charges (whether legal or equitable) on property of a building society and do not apply to or in relation to any other charges:

- (a) a floating charge on the whole or a part of the property, business or undertaking of the building society;
- (b) a charge on uncalled share capital or uncalled share premiums;
- (c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;
- (d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under a law in force in the State relating to title to ships;
- (e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;
- (f) a charge on a book debt;
- (g) a charge on a marketable security, not being—
 - (i) a charge created in whole or in part by the deposit of a document of title to the marketable security;
 or
 - (ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by him or her;
- (h) a charge on a negotiable instrument other than a marketable security.

(2) The provisions of this Division mentioned in subsection (1) do not apply to or in relation to—

- (a) a charge, or a lien over property, arising by operation of law;
- (b) a pledge of a personal chattel or of a marketable security;

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;

(d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business;

or

(e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

(3) The reference in subsection (1)(d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on—

(a) a document evidencing title to land;

(b) a chattel interest in land;

(c) a marketable security;

(d) a document evidencing a thing in action;

or

(e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

(4) The reference in subsection (1)(f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the building society at some future time on account of or in connection with the business carried on by the building society, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, on a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

(5) For the purposes of this section, a building society is to be taken to have deposited a document of title to property with another person (in this subsection referred to as the "chargee") in a case where the document of title is not in the possession of the building society if—

(a) the person who holds the document of title acknowledges in writing that he or she holds the document of title on behalf of the chargee;

or

(b) a government, an authority or a corporation that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

(6) For the purposes of this section, a charge is to be taken to be a charge on property of a kind to which a particular paragraph of subsection (1) applies notwithstanding that the instrument of charge also charges other property of the building society including other property that is of a kind to which none of the paragraphs of that subsection applies.

(7) The provisions of this Division mentioned in subsection (1) do not apply to or in relation to a charge on land.

(8) The provisions of this Division mentioned in subsection (1) do not apply to or in relation to a charge on fixtures given by a charge on the land to which they are affixed.

(9) A charge on property of a building society is not invalid by reason only of the failure to lodge with the Commission or give to the building society or another person a notice or other document that is required by this Division to be so lodged or given.

Lodgment of notice of charge and copy of instrument

87. (1) Where a building society creates a charge, the building society must ensure that there is lodged with the Commission, within 45 days after the creation of the charge—

- (a) a notice in the prescribed form setting out the following particulars:
 - (i) the name of the building society and the date of the creation of the charge;
 - (ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
 - (iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
 - (iv) a short description of the liability (whether present or prospective) secured by the charge;
 - (v) a short description of the property charged;
 - (vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
 - (vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;
 - (viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;
 - (ix) such other information as is prescribed;

- (b) if, pursuant to a resolution or resolutions passed by the building society, the building society issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture;

and

- (c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments—
- (i) the instrument or each of the instruments;
- or
- (ii) a copy of the instrument or of each of the instruments verified by statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

(2) In a case to which subsection (1)(b) applies—

- (a) the charge is, for the purposes of subsection (1), to be deemed to be created when the first debenture in the series of debentures is issued;

and

- (b) if, after the issue of the first debenture in the series, the building society passes a further resolution authorizing the issue of debentures in the series, the building society must ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged with the Commission within 45 days after the passing of that resolution.

(3) A notice in relation to a charge, being a charge in relation to which subsection (1)(b) or (c) applies, is not to be taken to have been lodged with the Commission under subsection (1) unless the notice is accompanied by the document specified in paragraphs (b) and (c) of that subsection.

(4) Where a notice with respect to an instrument creating a charge has been lodged under subsection (1), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, section 90 and schedule 2 have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

(5) Where a building society issues debenture as security for a debt of the building society, the building society is not thereby to be regarded as having allowed a discount in respect of the debentures.

Acquisition of property subject to charge

88. (1) Where a building society acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a building society, the building society must, within 45 days after the acquisition of the property—

- (a) ensure that there is lodged with the Commission—
 - (i) a notice in the prescribed form in relation to the charge, setting out the name of the building society and the date on which the property was so acquired and otherwise complying with the requirements of section 87(1)(a);
 - (ii) if the charge was created or evidenced as mentioned in section 87(1)(b)—a copy of the resolution or of each of the resolutions referred to in that provision verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that provision verified by a statement in writing to be a true copy;

and

- (iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in section 87(1)(b))—
 - (A) the instrument or each of the instruments;
 or
 - (B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy;

and

- (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

(2) A notice in relation to a charge, being a charge in relation to which subsection (1)(a)(ii) or (iii) applies, is not to be taken to have been lodged with the Commission under subsection (1) unless it is accompanied by the documents required under that subsection.

Registration of documents relating to charges

89. (1) The Commission must keep a register to be known as the Register of Building Society Charges.

(2) Where a notice in respect of a charge on property of a building society that is required by section 87 or 88 to be lodged with the Commission is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required to be included in the notice, the Commission must forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the following particulars in relation to the charge:

- (a) if the charge is a charge created by the building society, the date of its creation or, if the charge was a charge existing on property acquired by the building society, the date on which the property was so acquired;
- (b) a short description of the liability (whether present or prospective) secured by the charge;
- (c) a short description of the property charged;
- (d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

(3) Subject to subsection (9), where particulars in respect of a charge are entered in the Register in accordance with subsection (2), the charge is to be taken to be registered, and to have been registered from and including the time and date entered in the Register under that subsection.

(4) Where a notice in respect of a charge on property of a building society is lodged with the Commission under section 87 or 88 (whether during or after the period within which the notice was required to be lodged) and a document that accompanies that notice has not been duly stamped as required by any applicable law relating to stamp duty, the Commission must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in subsection (2)(a), (b), (c) and (d), but must cause the word "provisional" to be entered in the Register next to the entry specifying that time and date.

(5) Where—

- (a) in accordance with subsection (4), the word "provisional" is entered in the Register next to an entry specifying the time and date on which a notice in respect of a charge was lodged;

and

- (b) within a period of 30 days after the notice was lodged, or within such further period as the Commission, if it considers it to be appropriate in a particular case, allows, evidence satisfactory to the Commission that the document has been duly stamped has been produced to the Commission,

the Commission must delete the word "provisional" from the entry in the Register relating to that charge, but if such evidence is not produced within the period, or the further period, referred to in paragraph (b), the Commission must delete from the Register all the particulars that were entered in relation to the charge.

(6) Where a document that purports to be a notice in respect of a charge on property of a building society for the purposes of section 87 or 88 is lodged with the Commission (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the building society concerned and the particulars referred to in section 87(1)(a)(vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective—

- (a) the Commission must cause to be entered in the Register the time and date when the document was so lodged with the Commission and such of the particulars referred to in subsection (2)(a), (b), (c) and (d) as are ascertainable from the document, but must cause the word "provisional" to be entered in the Register next to the entry specifying that time and date;

and

- (b) the Commission must, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged with the Commission, on or before the date specified in the notice, a notice in relation to the charge that complies with the requirements of section 87 or 88, as the case may be, but the giving by the Commission of a direction to the person under this paragraph does not affect any liability that the building society may have incurred or may incur by reason of a contravention of section 87 or 88.

(7) Where the Commission gives a direction to a person under subsection (6)(b) in relation to a charge—

- (a) if the direction is complied with on or before the date specified in the notice containing the direction, the Commission must—

- (i) delete from the Register the word "provisional" that was inserted pursuant to subsection (6)(a);

and

- (ii) cause to be entered in the Register in relation to the charge any particulars referred to in subsection (2) that have not previously been entered;

- (b) if the direction is not complied with on or before that date—the Commission must delete from the Register all the particulars that were entered in relation to the charge;

and

- (c) if the direction is complied with after that date—the Commission must cause to be entered in the Register in relation to the charge the time at which and date on which the direction was complied with and the particulars referred to in subsection (2)(a), (b), (c) and (d).

(8) The Commission may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Commission thinks fit.

(9) If the word "provisional" is entered in the Register next to an entry specifying a time and date in relation to a charge, the charge is to be taken not to have been registered but—

- (a) where the word "provisional" is deleted from the Register pursuant to subsection (5) or (7)(a)—the charge is to be taken to be registered and to have been registered from and including the time and date specified in the Register pursuant to subsection (4) or (6)(a) as the case may be;

or

- (b) where the particulars in relation to the charge are deleted from the Register pursuant to subsection (7)(b) and those particulars and a time and date are subsequently entered in the Register in relation to the charge pursuant to subsection (7)(c)—the charge is to be taken to be registered from and including that last mentioned time and date.

(10) Where, pursuant to section 88, a building society lodges with the Commission notices relating to two or more charges on the same property acquired by the building society (being charges that are not already registered under this Division), the time and date that must be entered in the Register in relation to each of those charges are the time and date when the first notice was lodged with the Commission.

(11) Where, in accordance with subsection (10), the time and date that are entered in the Register are the same in relation to two or more charges on property acquired by a building society, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under this Division.

(12) Where a notice is lodged with the Commission under section 93 (whether during or after the period within which it was required to be lodged), the Commission must forthwith cause to be entered in the Register the time and date when the notice was so lodged with the Commission and the particulars set out in the notice.

Priorities of charges

90. (1) Subject to this section, the provisions of schedule 2 have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a building society.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in schedule 2 is subject to—

- (a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge;

and

- (b) any agreement between those chargees that affects the priorities in relation to each other of the charges, in relation to which those persons are the chargees.

(3) The holder of a registered charge, being a floating charge, on property of a building society is to be taken, for the purposes of subsection (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless—

- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge;

and

- (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Commission under section 87, 88 or 93 before the creation of the subsequent registered charge.

(4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of section 86(1) applies or apply and also relates to other property, the provisions of schedule 2 apply so as to affect the priority of the charge only insofar as it relates to the first mentioned property and do not affect the priority of the charge insofar as it relates to the other property.

Certain charges void against liquidator or official manager

91. (1) Where—

- (a) an order is made, or a resolution is passed, for the winding up of a building society;

or

- (b) an official manager is appointed in respect of a building society,

a registrable charge on any property of the building society is void as a security on that property as against the liquidator or official manager, as the case may be, unless—

- (c) a notice in respect of the charge was lodged with the Commission under section 87 or 88, as the case requires—

- (i) within the relevant period;

or

- (ii) not later than six months before the commencement of the winding up or the appointment of the official manager, as the case may be;

- (d) the period within which a notice in respect of the charge (other than a notice under section 93) is required to be lodged with the Commission, being the period specified in the relevant section or that period as extended by the Court under subsection (3), has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period;

or

- (e) in relation to a charge to which section 88 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a building society has not expired at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the expiration of that period.

(2) The reference in subsection (1)(c) to the relevant period is to be construed as a reference to—

(a) in relation to a charge to which section 87(1) applies—the period of 45 days specified in that provision, or that period as extended by the Court under subsection (4) of this section;

or

(b) in relation to a charge to which section 88 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a building society.

(3) Where, after there has been a variation in the terms of a registrable charge on property of a building society having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge—

(a) an order is made, or a resolution is passed, for the winding up of the building society;

or

(b) an official manager is appointed in respect of the building society,

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless—

(c) a notice in respect of the variation was lodged with the Commission under section 93—

(i) within the period of 45 days specified in section 93(2) or that period as extended by the Court under subsection (4) of this section;

or

(ii) not later than six months before the commencement of the winding up or the appointment of the official manager, as the case may be;

or

(d) the period of 45 days specified in section 93(2), or that period as extended by the Court under subsection (4) of this section, has not expired at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the expiration of that period.

(4) The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division—

(a) was accidental or due to inadvertence or some other sufficient cause;

or

(b) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief, may, on the application of the building society or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

(5) Where—

(a) a registrable charge (in this subsection referred to as the "later charge") is created before the expiration of 45 days after the creation of an unregistered registrable charge (in this subsection referred to as the "earlier charge");

(b) the later charge relates to all or any of the property to which the earlier charge related;

and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability,

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the building society, notwithstanding that a notice in respect of the later charge was lodged with the Commission under section 87 within a period mentioned in subsection (1)(c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(6) Nothing in subsection (1) or (3) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of—

(a) the filing of an application for an order for the winding up of the building society;

(b) the passing of a resolution for the voluntary winding up of the building society;

or

(c) the passing of a resolution that the building society be placed under official management.

(7) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in subsection (6)(a), (b) and (c) is on the person asserting that the property was so purchased.

Charges in favour of certain persons void in certain cases

92. (1) Where—

- (a) a building society creates a charge on property of the building society in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge;

and

- (b) within six months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under subsection (3), given leave for the charge to be enforced,

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and are to be taken always to have been, void.

(2) Without limiting the generality of subsection (1), a person who—

- (a) appoints a receiver of property of a building society under powers conferred by an instrument creating or evidencing a charge created by the building society;

or

- (b) whether directly or by an agent, enters into possession or assumes control of property of a building society for the purposes of enforcing a charge created by the building society,

is to be taken, for the purposes of subsection (1), to take a step in the enforcement of the charge.

(3) On application by the chargee under a charge, the Court may, if it is satisfied that—

- (a) immediately after the creation of the charge, the building society that created the charge was solvent;

and

- (b) in all the circumstances of the case, it is just and equitable for the Court to do so,

give leave for the charge to be enforced.

(4) Nothing in subsection (1) affects a debt, liability or obligation of a building society that would, if that subsection had not been enacted, have been secured by a charge created by the building society.

(5) Nothing in subsection (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(6) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subsection (5) is on the person asserting that the property was so purchased.

(7) In this section—

"chargee", in relation to a charge, means—

(a) in any case—the holder, or all or any of the holders, of the charge;

or

(b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether on demand or otherwise—that person, or all or any of those persons:

"receiver" includes a receiver and manager:

"relevant person", in relation to a charge created by a building society, means—

(a) a person who is at the time when the charge is created, or who has been at any time during the period of six months ending at that time, an officer of the building society;

or

(b) a person associated with a person of a kind referred to in paragraph (a).

Assignment and variation of charges

93. (1) Where, after a registrable charge on property of a building society has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge must, within 45 days after he or she becomes the holder of the charge—

(a) lodge with the Commission a notice stating that he or she has become the holder of the charge;

and

(b) give the building society a copy of the notice.

(2) Where, after a registrable charge on property of a building society has been created, there is a variation in the terms of the charge having the effect of—

(a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge;

or

(b) prohibiting or restricting the creation of subsequent charges on the property,

the building society must, within 45 days after the variation occurs, ensure that there is lodged with the Commission a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a building society secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the building society in accordance with the terms of the charge is not to be taken, for the purposes of subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this section to the chargee in relation to a charge is, if the charge is constituted by a debenture or debentures and there is a trustee for debenture holders, to be construed as a reference to the trustee for debenture holders.

(5) Nothing in section 87 requires the lodgment of a notice under that section in relation to a charge by reason only of the fact that the terms of the charge are varied only in a manner mentioned in this section.

Satisfaction of, and release of property from, charges

94. (1) Where, with respect to a charge registered under this Division—

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part;

or

(b) the property charged or part of that property is released from the charge,

the person who was the holder of the charge at the time when the debt or the liability was so paid or discharged or the property or part of the property was released must, within 14 days after receipt of a request in writing made by the building society on whose property the charge exists, give to the building society a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

(2) The building society may lodge the memorandum with the Commission and, on the memorandum being so lodged, the Commission must enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released is, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, to be construed as a reference to the person who was, at that time, the trustee for debenture holders.

Lodgment of notices, offences, etc.

95. (1) Where a notice in respect of a charge on property of a building society is required to be lodged with the Commission under section 87, 88 or 93(2), the notice may be lodged by the building society or by any interested person.

(2) Where default is made in complying with section 87, 88 or 93(2) in relation to a registrable charge on property of a building society, the building society and any officer of the building society who is in default are each guilty of an offence.

(3) Where a person who becomes the holder of a registrable charge fails to comply with section 93(1), the person and, if the person is a corporation, any officer of the corporation who is in default, are each guilty of an offence.

(4) Where a document required by this Division other than section 93(1) to be lodged with the Commission is so lodged by a person other than the building society concerned, that person—

(a) must, within seven days after the lodgment of the document, give to the building society a copy of the document;

and

(b) is entitled to recover from the building society the amount of any fees properly paid by him or her on lodgment of the document.

Building society to keep documents relating to charges and register of charges

96. (1) A building society must keep, at the place where the register referred to in subsection (2) is kept, a copy of every document relating to a charge on property of the building society that is lodged with the Commission under this Division and a copy of every document that is given to the building society under this Division.

(2) A building society must keep a register and must, on the creation of a charge (whether registrable or not) on property of the building society, or on the acquisition of property subject to a charge (whether registrable or not), forthwith enter in the register particulars of the charge, giving in each case—

(a) if the charge is a charge created by the building society, the date of its creation or, if the charge was a charge existing on property acquired by the building society, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee;

and

(e) the name of the person whom the building society believes to be the holder of the charge.

(3) A register kept by a building society pursuant to subsection (2) must be open for inspection—

(a) by any creditor or member of the building society—without charge;

and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the building society requires or, where the building society does not require the payment of an amount, without charge.

(4) A person may request a building society to furnish him or her with a copy of the register or any part of the register and, where such a request is made, the building society must send the copy to that person—

(a) if the building society requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the building society or within such longer period as the Commission approves;

or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

(5) If default is made in complying with any provision of this section, the building society and any officer of the building society who is in default are each guilty of an offence.

Certificates

97. (1) Where particulars of a charge are entered in the Register in accordance with this Division, the Commission must, on request by any person, issue to that person a certificate under the common seal of the Commission setting out those particulars and stating the time and date when a notice in respect of the charge containing those particulars was lodged with the Commission and, if the word "provisional" appears in the Register next to the reference to that time and date, stating that fact.

(2) A certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Division, and the word "provisional" does not appear in the Register next to the reference to the time and date when a notice in respect of the charge was lodged with the Commission, the Commission must, on request by any person, issue to that person a certificate under the common seal of the Commission stating that particulars of the charge are entered in the Register in accordance with this Division.

(4) A certificate issued under subsection (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged with the Commission) have been complied with.

Registration under other legislation relating to charges

98. (1) Where a notice in relation to a charge is required to be lodged with the Commission under this Division—

- (a) the charge is not required to be registered under the provisions of the *Bills of Sale Act, 1886*;
 - (b) no provision of that Act relating to priorities applies to or in relation to the charge;
- and
- (c) a failure to register the charge under that Act does not affect the validity, or limit the effect, of the charge.

(2) Where—

- (a) a transfer, assignment or giving of security by a building society is registrable under the *Bills of Sale Act, 1886*;
 - (b) notice in relation to the transfer, assignment or giving of security is required to be lodged with the Commission under this Division;
- and
- (c) the transfer, assignment or giving of security has been or is registered under this Division,

the transfer, assignment or giving of security is, subject to subsection (1)(b), as valid and effectual as if it had been duly registered under the *Bills of Sale Act, 1886*.

(3) Nothing in this section applies in relation to a charge given by a building society jointly with another person who is, or other persons at least one of whom is, not a building society.

(4) In this section—

"registered", in relation to a transfer, assignment or giving of security that is registrable as a bill of sale under the *Bills of Sale Act, 1886*, includes registered by way of renewal, or further renewal, of registration.

Power of Court to rectify Register, etc.

99. Where the Court is satisfied—

- (a) that a particular with respect to a registrable charge on property of a building society has been omitted from, or mis-stated in, the Register or a memorandum referred to in section 94;
- and
- (b) that the omission or mis-statement—
 - (i) was accidental or due to inadvertence or to some other sufficient cause;

or

(ii) is not of a nature to prejudice the position of creditors or shareholders,

or that on other grounds it is just and equitable to grant relief,

the Court may, on the application of the building society or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

Power to exempt from compliance with certain requirements of Division

100. (1) The Commission may, by instrument in writing, conditionally or unconditionally, exempt a person from such of the requirements of section 87, 88 or 93 relating to—

(a) the particulars to be contained in a notice under the relevant section;

(b) the documents (other than the notice) to be lodged under the relevant section;

or

(c) the verification of any document required to be lodged under the relevant section,

as are specified in the instrument.

(2) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

Application of Division to charges existing before commencement of Division

101. The provisions of this Division and schedule 2 apply to and in relation to a charge created, or a charge over property acquired, by a building society before the commencement of this Division subject to such modifications, additions or exclusions as are prescribed.

PART V

PROVISIONS GOVERNING FINANCIAL ACTIVITIES OF BUILDING SOCIETIES

DIVISION I—LOANS AND INVESTMENTS

Loans to minors

102. A member of a building society under the age of 18 years is not entitled to obtain a loan from the building society unless—

(a) the loan is made jointly to the minor and his or her parent or guardian;

and

(b) the minor and his or her parent or guardian are jointly and severally liable on the contract.

Prohibition of balloting for loans

103. A building society must not cause or permit applicants for loans to ballot for precedence, or in any way make the granting of a loan dependent on any chance or lot.

Loans to officers and employees

104. (1) Subject to this Act and its rules, a building society may lend money to any of its officers and employees who are members of the building society.

(2) Notwithstanding any Act or law to the contrary, but subject to subsection (3), where a loan is made pursuant to this section to a director of a building society—

(a) the director is not obliged to report the loan to any general meeting of the members of the building society;

and

(b) failure so to report the loan does not affect the validity of the loan contract or render the director liable to account for any profits arising from the loan contract.

(3) The rules of a building society may provide that an officer or employee of the building society must report any loan obtained pursuant to this section to the annual general meeting of the building society next following the making of the loan.

(4) This section does not derogate from the provisions of sections 119 and 122.

Investments and guarantees

105. (1) A building society must not, except with the prior approval of the Commission—

(a) invest (whether by way of the making of deposits or loans or the acquisition of securities or otherwise) any of its funds—

(i) in any body corporate or other entity formed or acquired outside Australia by a subsidiary of the building society;

- (ii) in any subsidiary of the building society that so invests its funds in, or guarantees liabilities (whether existing or contingent) of, a body corporate or other entity formed outside Australia;
 - (iii) in another building society;
 - or
 - (iv) contrary to the regulations;
- (b) provide a guarantee of a kind not authorized by the regulations.

(2) The Commission may give an approval for the purposes of this section subject to such conditions as it thinks fit.

(3) A decision of the Commission to give or refuse an approval, or to impose a condition of an approval, for the purposes of this section is final.

DIVISION II—LEVEL OF ASSETS ASSOCIATED WITH PRIMARY OBJECTS

Level of assets associated with primary objects

106. (1) Subject to this section, a building society must ensure that at all times not less than 50 per cent of the total assets of the building society comprises assets derived from loans and investments made by it in pursuance of its primary objects.

(2) The Commission may, by notice published in the *Gazette*, exempt a building society or building societies generally from subsection (1).

(3) An exemption under this section—

- (a) may be conditional or unconditional;
- (b) may be limited in its effect to a specified period.

(4) The Commission may, by notice published in the *Gazette*, vary or revoke an exemption under this section.

(5) A decision of the Commission to issue, refuse, vary or revoke an exemption, or as to the conditions or period of effect of an exemption, under this section is final.

(6) A building society must in keeping its accounts keep a separate account in accordance with the regulations of the assets of the building society derived from loans and investments made in pursuance of its primary objects.

(7) For the purposes of this section—

(a) a reference to loans or investments made by a building society in pursuance of its primary objects—

(i) includes a reference to an investment made by a building society in a property trust established and managed by the building society solely or principally for the purpose of carrying out residential development but only to the extent that money so invested is applied in carrying out residential development;

(ii) includes a reference to a loan to or investment in a subsidiary of the building society but only to the extent that money so lent or invested is applied in carrying out residential development;

(b) a reference to assets of a building society is a reference—

(i) to an amount for the time being recorded in the accounts of the building society as assets of the building society;

or

(ii) if the building society is a holding building society—to an amount for the time being recorded in the group accounts as assets of the building society or a subsidiary of the building society,

subject to such adjustments (if any) as are required by Ministerial notice under this section.

(8) The Minister may, for the purposes of this section, by notice published in the *Gazette*, provide for adjustments that must be made to the value of assets as recorded in the accounts or group accounts of a building society.

(9) The Minister may, by notice published in the *Gazette*, vary or revoke a notice under subsection (8).

DIVISION III—PRIME ASSETS RATIO

Prime assets ratio

107. (1) A building society must ensure that at all times it holds prime assets that satisfy the required prime assets ratio.

Penalty: Division 4 fine.

(2) A building society does not hold prime assets that satisfy the required prime assets ratio for the purposes of subsection (1) unless the amount of its prime assets equals or exceeds 10 per cent of the difference between the total assets of the building society and its defined capital.

(3) In this section—

"assets", in relation to a building society, means an amount for the time being recorded in the accounts of the building society as assets of the building society, subject to such adjustments (if any) as are required by Ministerial notice under this section:

"defined capital", in relation to a building society, means the total for the time being of the amounts recorded in the accounts of the building society that may—

(a) as authorized by Ministerial notice under this section;

or

(b) as approved by the Commission on the written application of the building society,

be brought into account as capital for the purposes of this definition:

"monetary value", in relation to any security or investment, means the face value or market value of that security or investment, whichever is the lesser:

"prime assets" means the total of the following:

(a) cash at bank (but not including any amount represented by any cheque or bill of exchange drawn or endorsed in favour of the building society but not yet presented for payment);

(b) cash in hand;

(c) deposits in any prescribed bank;

(d) the monetary value of any securities issued or guaranteed by the Treasurer or the Government of this State or of the Commonwealth or any other State or Territory of the Commonwealth;

(e) the monetary value of bills of exchange that have been accepted or endorsed by a prescribed bank and are payable within 200 days;

(f) the monetary value of any loan made by the building society to an authorized dealer in the short term money market;

and

(g) the monetary value of any other prescribed securities or prescribed assets,

but does not include any such funds or investments to the extent of the amount necessary to satisfy any lien or charge (other than a floating charge) over the funds or investments or to satisfy any loan of a prescribed class approved but not yet advanced by the building society.

(4) In determining the amount of the prime assets held at any time by a building society, the following must be disregarded:

- (a) any money received by the building society from the Government of the State or the Commonwealth other than money required to be credited directly to depositors' accounts;

and

- (b) the monetary value of any security that is not to mature within a period of five years.

(5) The Minister may, for the purposes of this section, by notice published in the *Gazette*—

- (a) define the classes of capital of a building society that may be brought into account as defined capital;

- (b) provide for adjustments that must be made to the value of assets as recorded in the accounts of a building society.

(6) The Minister may, by notice published in the *Gazette*, vary or revoke a notice under subsection (5).

(7) The Commission may, by instrument in writing, permit a building society, conditionally or unconditionally, to grant a loan the granting of which would otherwise result in a contravention of the provisions of this section and may, on non-compliance with a condition of the permission, by instrument in writing, revoke the permission.

(8) A decision of the Commission to give, refuse or revoke a permission, or as to the conditions of a permission, under subsection (7) is final.

DIVISION IV—CAPITAL ADEQUACY

Capital adequacy

108. (1) A building society must maintain capital adequacy at all times.

(2) A building society is to be taken to have failed to maintain capital adequacy for the purposes of subsection (1) if its defined capital is at any time less than the prescribed minimum capital applicable to the building society as at that time.

(3) In this section—

"assets", in relation to a building society, means—

- (a) an amount for the time being recorded in the accounts of the building society as assets of the building society;

or

- (b) if the building society is a holding building society—an amount for the time being recorded in the group accounts as assets of the building society or a subsidiary of the building society,

subject to such adjustments (if any) are required by Ministerial notice under this section:

"defined capital", in relation to a building society, means the total for the time being of the amounts recorded in the accounts of the building society, or, if the building society is a holding building society, the group accounts, that may—

- (a) as authorized by Ministerial notice under this section;

or

- (b) as approved by the Commission on the written application of the building society,

be brought into account as capital for the purposes of this definition:

"prescribed minimum capital", in relation to a building society, means eight per cent of the total weighted value assets of the building society:

"total weighted value assets", in relation to a building society, means the total for the time being of—

- (a) the assets of the building society that fall within the classes of assets specified by Ministerial notice under this section;

and

- (b) such further amounts (if any) as are required by Ministerial notice to be brought into account as assets in respect of off balance-sheet transactions or otherwise for the purposes of this definition,

adjusted, in the case of assets of each class, by multiplying the amount of the assets by the weighting percentage fixed in the notice in relation to that class of assets.

(4) The Minister may, for the purposes of this section, by notice published in the *Gazette*—

- (a) define the classes of capital of a building society that may be brought into account as defined capital;
- (b) provide for adjustments that must be made to the value of assets as recorded in the accounts or group accounts of a building society;
- (c) specify the classes of assets to be brought into account in calculating the total weighted value assets of a building society and fix a percentage as the weighting percentage for each such class of assets;

- (d) require further amounts (whether in respect of off balance-sheet transactions or otherwise) to be brought into account as assets in calculating the total weighted value assets of a building society and fix a percentage as the weighting percentage for each such class of assets.

(5) The Minister may, by notice published in the *Gazette*, vary or revoke a notice under subsection (4).

Variation of capital adequacy requirements where excessive risks undertaken

109. (1) Where the Commission is of the opinion—

- (a) that a building society has undertaken excessive risks as a result of financial transactions entered into by the building society or a subsidiary of the building society;

or

- (b) that a building society has failed to develop and apply adequate systems to monitor and manage risks associated with its financial activities,

the Commission may, by notice in writing to the building society, vary the capital adequacy requirements for the building society under section 108—

- (c) by increasing the weighting percentage for any class of assets of the building society determined by the Commission to be affected by that action or failure on the part of the building society;

or

- (d) by increasing the percentage of total weighted value assets by means of which the prescribed minimum capital of the building society is to be calculated.

(2) The Commission may, by notice published in the *Gazette*—

- (a) declare that a building society will, if it or a subsidiary of the building society enters into a transaction of a kind specified in the notice, be treated by the Commission as having undertaken excessive risks for the purposes of subsection (1);

and

- (b) require that a building society must, before the building society or a subsidiary of the building society enters into such a transaction, furnish to the Commission such information and documents relating to the proposed transaction as are specified in the notice.

(3) A notice under subsection (2) must relate to building societies and their subsidiaries generally and not to a particular building society and its subsidiaries.

(4) The Commission may, by notice published in the *Gazette*, vary or revoke a notice under subsection (2).

(5) Any decision of the Commission to issue or to vary or revoke a notice under this section is final.

(6) The Commission may, of its own motion, or on application in writing by the building society, vary or revoke a notice under subsection (1) by further notice in writing if of the opinion that is appropriate to do so having regard to any change—

(a) in the pattern of financial transactions of the building society and its subsidiaries (if any) or in the risks associated with those transactions;

or

(b) in the building society's systems to monitor and manage risks associated with its financial activities.

(7) A building society may appeal to the Minister against—

(a) a decision of the Commission to issue a notice under subsection (1);

or

(b) the refusal by the Commission of an application by the building society for the variation or revocation of a notice under subsection (1),

and the Minister may, on any such appeal, confirm, vary or revoke the decision of the Commission.

(8) A notice issued to a building society under subsection (1) has effect to vary the operation of section 108 in relation to that building society according to the terms of the notice.

(9) In this section—

"prescribed minimum capital" means prescribed minimum capital as defined in section 108:

"weighting percentage" means the weighting percentage fixed by Ministerial notice for the purposes of the definition of "total weighted value assets" in section 108.

DIVISION IV—FOREIGN CURRENCY TRANSACTIONS

Control of foreign currency transactions

110. (1) A building society must not—

(a) invest any of its funds in foreign currency;

or

(b) except as provided by this section, carry out any of its activities in foreign currency.

Penalty: Division 4 fine.

(2) A building society may borrow money in a foreign currency from a source within or outside Australia provided that—

(a) the loan contract is hedged in accordance with this section;

and

(b) the building society complies with any directions issued by the Minister by notice published in the *Gazette*.

(3) The requirement for hedging a loan contract does not apply in any case or circumstances of a kind approved by the Commission.

(4) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published for the purposes of this section.

(5) A loan contract is not to be taken to be hedged for the purposes of this section unless—

(a) the building society enters into approved hedging arrangements to minimize the risks of losses in relation to the principal and interest payments on the loan contract that might otherwise be incurred due to adverse movements in currency exchange rates;

(b) the cost of such arrangements is fixed in Australian currency as at the time the loan contract is entered into;

and

(c) except where the Commission otherwise approves, the other party to the hedging arrangements is a bank or other prescribed body.

(6) For the purposes of this section, approved hedging arrangements consist only of one or more of the following contracts:

(a) forward exchange rate contracts;

(b) currency swap contracts;

and

(c) other contracts of a kind approved by the Commission.

(7) The Commission may give an approval for the purposes of this section subject to such conditions as it thinks fit.

(8) A decision of the Commission to give or refuse an approval, or to impose a condition of an approval, for the purposes of this section is final.

DIVISION V—RISK MANAGEMENT

Control of certain financial transactions

111. (1) Except as provided by this section, a building society must not engage in transactions of the following kinds:

- (a) transactions relating to financial or other futures;
- (b) options in futures transactions;
- (c) forward interest rate transactions;
- (d) interest rate swap transactions;

or

- (e) other financial transactions of a kind specified by the Minister by notice published in the *Gazette*.

Penalty: Division 4 fine.

(2) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published for the purposes of this section.

(3) A building society may enter into and deal in approved financial contracts where it does so for the purpose of reducing the risk of adverse variations—

- (a) in the costs of the borrowing or raising of money by the building society;

or

- (b) in the revenue obtainable by the building society from investments or loans made by the building society,

and not otherwise.

(4) For the purposes of this section, approved financial contracts consist only of the following:

- (a) futures contracts relating to—

- (i) securities issued or guaranteed by the Treasurer or the Government of this State or of the Commonwealth or any other State or Territory of the Commonwealth;

or

- (ii) bills of exchange that have been accepted or endorsed by a prescribed bank and are payable within 200 days,

but only where made or dealt in or on a futures market of a futures exchange within the meaning of the *Futures Industry (South Australia) Code*;

(b) —

(i) interest rate swap contracts;

or

(ii) forward interest rate contracts,

to which a bank or other prescribed body is a party;

(c) options in respect of contracts referred to in paragraph (a) or (b);

or

(d) other contracts of a prescribed kind or of a kind approved by the Commission.

(5) The Commission may give an approval for the purposes of this section subject to such conditions as it thinks fit.

(6) A decision of the Commission to give or refuse an approval, or to impose condition of an approval, for the purposes of this section is final.

Risk management

112. (1) A building society must develop and apply adequate systems to monitor and manage risks associated with its financial activities.

(2) A building society must, in developing and applying systems for the purposes of subsection (1), comply with such directions as the Minister may issue by notice published in the *Gazette*.

(3) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published for the purposes of this section.

DIVISION VI—POWER TO SUSPEND OR RESTRICT RAISING OF FUNDS

Power to suspend or restrict raising of funds

113. (1) The Commission may, if of the opinion that it is necessary to do so—

(a) to ensure the financial stability of a building society;

or

(b) to protect the interests of the members of a building society,

by notice in writing to the building society, prohibit or restrict the raising of funds by the building society for a period specified in the notice, or until further notice.

(2) The Commission may, by further notice in writing to the building society, vary or revoke a notice under this section.

(3) A building society may appeal to the Minister against a prohibition or restriction imposed on it under this section.

(4) The Minister may determine an appeal under this section in such manner as he or she considers just and may confirm, vary or revoke the prohibition or restriction.

(5) A building society must not contravene a prohibition or restriction imposed on it under this section.

DIVISION VII—GUARANTEES

Guarantees

114. (1) The Treasurer may, on the recommendation of the Commission, execute a guarantee in favour of a person for the repayment of an advance made, or to be made, by that person to a building society.

(2) Before executing a guarantee, the Treasurer may require the building society to comply with any conditions that the Treasurer thinks necessary for the purpose of preventing loss and securing the efficient management of the building society.

(3) The guarantee may cover the interest and other charges charged or to be charged in respect of the loan.

(4) Any sum that may become due and payable by the Treasurer under a guarantee given pursuant to this section may be paid out of the Consolidated Account without further appropriation.

PART VI

MANAGEMENT

DIVISION I—DIRECTORS AND OFFICERS

Board of Directors

115. (1) The business of a building society must be managed and controlled by a board of directors comprised of natural persons, and for that purpose the board has, subject to this section, the powers of the building society.

(2) The powers of the board are subject to any restrictions imposed on it by this Act or by rules of the building society.

(3) A majority of the directors of a building society must reside permanently in the State.

(4) A building society must not have less than five directors.

Validity of acts of directors

116. The acts of a director are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

Appointment of directors

117. (1) The directors of a building society must be appointed in accordance with the rules of the building society by a general meeting of the building society.

(2) A director of a building society, if so authorized by the rules of the building society, may appoint a person to be his or her deputy and such a person may act as a director of the building society in the absence of the person of whom he or she is deputy.

Qualification of a director and vacation of office

118. (1) A person is not eligible to be a director of a building society if that person—

- (a) has not attained the age of 18 years;
- (b) is not a member of the building society;
- (c) is a bankrupt or insolvent debtor or is bound by a composition in favour of creditors;
- (d) is prohibited from being a director of a corporation pursuant to the *Companies (South Australia) Code*;

or

- (e) has been convicted within the preceding period of 10 years—
 - (i) of an indictable offence in connection with the promotion, formation or management of a body corporate;
 - (ii) of an offence involving fraud or dishonesty;

or

(iii) of any prescribed offence.

(2) The office of a director becomes vacant if the director—

- (a) dies;
- (b) completes a term of office and is not reappointed;
- (c) is absent from three consecutive ordinary meetings of the board without its leave;
- (d) ceases to be a member of the building society;
- (e) resigns by instrument in writing addressed to the board;
- (f) is four months in arrears in respect of money due to the building society and has failed to make arrangements for payment satisfactory to the building society;
- (g) becomes a bankrupt or insolvent debtor, is bound by a composition in favour of creditors or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (h) is prohibited from being a director of a corporation pursuant to the *Companies (South Australia) Code*;

or

(i) is convicted—

- (i) of an indictable offence in connection with the promotion, formation or management of a body corporate;
- (ii) of an offence involving fraud or dishonesty;

or

(iii) of any prescribed offence.

(3) The term of office of a director appointed to fill a casual vacancy expires on the day of the annual general meeting of the building society next following his or her appointment.

(4) The term of office of a director expires on the day of the annual general meeting next following the day on which the director attains the age of 72 years or such lesser age as is fixed by the rules of the building society.

(5) Subject to the rules of the building society, a person of or above the age of 72 years may be appointed or reappointed from time to time as a director for a term of office expiring on the day of the next annual general meeting of the building society.

(6) A director may not be removed from office, and the office of a director will not become vacant, except as provided by this Act.

Disclosure of interest

119. (1) Subject to this section, a director of a building society who is or becomes in any way (whether directly or indirectly) interested in a contract, or proposed contract, with the building society must declare the nature and extent of the interest to the board of directors in accordance with this section.

(2) In the case of a proposed contract, the declaration must be made at the meeting of directors at which the question of entering into the contract is first considered, or if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he or she becomes interested in the proposed contract.

(3) Where a director becomes interested in a contract with the building society after it is made, the declaration must be made at the first meeting of the directors held after he or she becomes interested in the contract.

(4) For the purposes of this section, a general notice in writing given to the board by a director to the effect that he or she is a member of a specified company or firm, and is to be regarded as interested in any contract which may, after the date of the notice, be made with that company or firm, is a sufficient declaration.

(5) A director of a building society who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must, in accordance with subsection (6), declare at a meeting of the directors of the building society the fact and the nature, character and extent of the conflict.

(6) A declaration required by subsection (5) in relation to the holding of an office or the possession of any property must be made by a person—

(a) where the person holds the office or possesses the property when he or she becomes a director—at the first meeting of directors held after—

(i) he or she becomes a director;

or

(ii) the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge,

whichever is later;

or

(b) where the person commences to hold the office or comes into possession of the property after he or she becomes a director—at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge.

(7) A secretary of a building society must record every declaration made pursuant to this section in the minutes of the meeting at which it was made.

(8) Any declaration made pursuant to this section must be reported by the board—

(a) forthwith to the Commission;

and

(b) to the members at the annual general meeting next following the making of the declaration.

(9) This section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of a building society restricting a director from having any interest in contracts with the building society or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director.

Register of directors and their shareholdings, etc.

120. (1) A building society must keep a register showing with respect to each director of the building society—

(a) the present Christian or given name and surname, any former Christian or given name or surname, the date and place of birth, the usual residential address and the business occupation (if any) of the director;

(b) particulars of directorships held by the director in corporations (other than related corporations) that are public companies or subsidiaries of public companies;

(c) securities issued by the building society that are held by the director or an associate of the director, and, in the case of securities held by an associate, the nature of the relationship between the director and the associate;

(d) securities issued by a corporation that is related to the building society, being securities in which the director has a relevant interest, and the nature and extent of that interest;

(e) particulars of rights or options of the director, or of the director and another person or other persons, in respect of the acquisition or disposal of securities issued by the building society or a corporation that is related to the building society;

and

(f) particulars of contracts to which the director is a party or under which he or she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of securities issued by the building society or a corporation that is related to the building society.

(2) A building society need not show in its register with respect to a director particulars of securities issued by a corporation that is related to the building society and is a wholly owned subsidiary of the building society.

(3) A building society must, within seven days after receiving notice from a director under section 121(1)(a), enter in its register in relation to the director the particulars referred to in subsection (1) including the number and description of securities, rights, options and contracts to which the notice relates and, in respect of securities, rights or options acquired or contracts entered into after he or she became a director—

(a) the price or other consideration for the transaction (if any) by reason of which an entry is required to be made under this section;

and

(b) the date of—

(i) the agreement for the transaction or, if it is later, the completion of the transaction;

or

(ii) where there was no transaction, the occurrence of the event by reason of which an entry is required to be made under this section.

(4) A building society must, within three days after receiving a notice from a director under section 121(1)(b), enter in its register the particulars of the change referred to in the notice.

(5) A building society is not, by reason of anything done under this section, to be taken for any purpose to have notice of, or to be on inquiry as to, the right of a person to or in relation to a security issued by the building society.

(6) A register kept by a building society pursuant to this section must be open for inspection—

(a) by any member of the building society—without charge;

and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the building society requires or, where the building society does not require the payment of an amount, without charge.

(7) A person may request a building society to furnish him or her with a copy of the register or any part of the register and, where such a request is made, the building society must send the copy to that person—

(a) if the building society requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the building society or within such longer period as the Commission approves;

or

(b) in any other case—within 21 days after the request is made or within such longer period as the Commission approves.

(8) A building society must produce its register at the commencement of each annual general meeting of the building society and keep it open and accessible during the meeting to all persons attending the meeting.

(9) It is a defence to a prosecution for failing to comply with subsection (1) or (3) in respect of particulars relating to a director if the defendant proves that the failure was due to the failure of the director to comply with section 121 with respect to those particulars.

(10) In determining for the purposes of this section whether a person has a relevant interest in a security issued by a corporation, the provisions of section 8 of the *Companies (South Australia) Code* apply for the purposes of this section but as if a reference in those provisions to a share were a reference to a security.

General duty to make disclosure

121. (1) A director of a building society must give notice in writing to the building society—

- (a) of such particulars relating to securities, rights, options and contracts as are necessary for the purposes of compliance by the building society with the provisions of section 120;
- (b) of particulars of any change in respect of the particulars referred to in paragraph (a), including the consideration (if any) received as a result of the event giving rise to the change.

(2) A director required to give a notice under subsection (1) must give the notice—

- (a) in the case of a notice under subsection (1)(a), within 14 days after—
 - (i) the date on which he or she became a director;
 - or
 - (ii) as the case may require, the date on which the director became aware that he or she, or an associate of his or hers, had acquired the securities, a relevant interest in the securities or the rights or options or the date on which the director entered into the contracts,

whichever last occurs;

and

- (b) in the case of a notice under subsection (1)(b), within 14 days after he or she becomes aware of the occurrence of the event giving rise to the change referred to in that provision.

(3) A building society must, within seven days after the receipt by it of a notice given under subsection (1), send a copy of the notice to each of the other directors of the building society.

(4) In any proceedings under this section, a person is, in the absence of proof to the contrary, to be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person, being an employee or agent having duties or acting in relation to his employer's or principal's interest or interests in a security issued by the building society concerned, was aware at that time.

Certain dealings are prohibited

122. (1) An officer of a building society must not, without the approval of a majority of the directors—

- (a) sell any real or personal property to, or act as agent in respect of the sale of any real or personal property to, a member of the building society who proposes to pay for the real or personal property (in whole or in part) out of a loan made by the building society;
- (b) undertake the erection of any building for a member of the building society who proposes to pay for the building (in whole or in part) out of a loan made by the building society;
- (c) accept as payment (in whole or in part) of any money due to him or her from a member of the building society the whole or part of any loan made by the building society to that member;

or

- (d) borrow money from the building society.

(2) For the purposes of this section, anything done—

- (a) by a proprietary company in which an officer of the building society is a shareholder or director;

or

- (b) by a trust where the officer is a trustee or beneficiary under the trust or where the trustee is a body corporate and the officer is a director or other officer of that body,

is to be regarded as having been done by the officer.

Director's remuneration

123. A director (other than an employee) of any building society must not be paid any remuneration for his or her services as a director other than such fees, concessions and other benefits as may be approved at a general meeting of the building society.

Meetings of the board

124. (1) Meetings of the board of directors of a building society must be held as often as may be necessary for properly conducting the business of the building society.

(2) A meeting of the board of directors of a building society must be held on or before the expiration of three months from the date of the last meeting of the board.

(3) A quorum at a meeting of the board of directors of a building society consists of the number of directors prescribed by the rules of the building society but that number may not in any case be less than half of the total number of the directors.

(4) Subject to this section, a meeting of the board of directors of a building society may be conducted in any manner prescribed by the rules of the building society.

Unlawfully acting as director

125. (1) A person, other than a director, or the deputy of a director, of the building society, must not purport to act as a director of a building society.

(2) A director of a building society must not permit a person other than a director, or the deputy of a director, of the building society to purport to act as such.

Duty and liability of officers and employees

126. (1) An officer of a building society must at all times act honestly in the exercise of the powers and the discharge of the duties of his or her office.

Penalty: Division 4 fine or division 4 imprisonment.

(2) An officer of a building society must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the duties of his or her office.

Penalty: Division 6 fine.

(3) An officer or employee of a building society, or a former officer or employee of a building society, must not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the building society.

Penalty: Division 4 fine or division 4 imprisonment.

(4) An officer or employee of a building society must not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the building society.

Penalty: Division 4 fine or division 4 imprisonment.

(5) Where—

(a) a person is convicted of an offence against this section;

and

(b) the court by which the person is convicted is satisfied that the building society has suffered loss or damage as a result of the act or omission that constituted the offence,

court may, in addition to imposing a penalty, order the convicted person to pay compensation to the building society of such amount as the court specifies, and any such order may be enforced as if it were a judgment of that court.

(6) Where a person contravenes or fails to comply with a provision of this section in relation to a building society, the building society may, whether or not the person has been convicted of an offence against this section in relation to that contravention or failure, recover from the person as a debt due to the building society by action in a court of competent jurisdiction—

- (a) if that person or any other person made a profit as a result of the contravention or failure—an amount equal to that profit;

and

- (b) if the building society has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

(7) This section is in addition to and does not derogate from any other rule of law relating to the duties of directors and officers of bodies corporate.

(8) In this section—

"officer" has the meaning assigned to that term by section 3 and includes—

- (a) a receiver, or receiver and manager, of the property of the building society, or any other authorized person who enters into possession or assumes control of property of the building society for the purpose of enforcing any charge;

- (b) an official manager or a deputy official manager of the building society;

- (c) a liquidator of the building society;

or

- (d) a trustee or other person administering a compromise or arrangement made between the building society and any other person or persons.

DIVISION II—MEETINGS OF MEMBERS OF A BUILDING SOCIETY AND VOTING

Meetings of building societies

127. (1) The annual general meeting of a building society must be held within five months after the close of the building society's financial year, or within such further time as may be allowed by the Commission.

(2) An application for an extension of time for the purposes of subsection (1) must be made to the Commission before the expiration of the period sought to be extended.

(3) Any other meetings of a building society must be held, or may be called, as prescribed by the rules of the building society.

(4) At a meeting of a building society no business may be transacted unless a quorum of members, as prescribed by the rules of the building society, is present at the time the meeting is considering that business.

(5) Subject to subsection (6), a notice setting out the general nature of the business to be transacted at a meeting—

- (a) must, not more than five weeks and not less than three weeks before the date of the meeting, be advertised on two separate days in a newspaper circulating generally in the State and, where the building society is carrying on business as a building society in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory;

and

- (b) must be exhibited in a conspicuous place at the head office and each branch office of the building society over a period of at least three weeks immediately preceding the date of the meeting.

(6) Where a building society seeks to call an extraordinary general meeting of its members, the notice is sufficient if given not less than seven days before the date of the meeting.

(7) The auditors of a building society are entitled to attend every meeting of the building society.

Voting

128. (1) Subject to this Act and the rules of a building society, every question arising for decision at a meeting of a building society must be determined by a majority of those members who, being entitled to vote and present at the meeting either personally or by proxy, vote on the question and, unless a poll is demanded by at least five of those members, the question may be determined by a show of hands.

(2) The rules of a building society may provide for postal voting by members on any question other than one to be determined by special resolution.

(3) The Commission may, on application in writing by a building society, permit the building society to conduct postal voting on a question or class of questions to be determined by special resolution.

(4) A permission under subsection (3) may be granted conditionally or unconditionally and may be varied or revoked by the Commission at any time by notice in writing to the building society.

(5) Notwithstanding anything to the contrary in the rules of the building society, no member is entitled to more than one vote on any question arising for decision at a meeting of the building society.

(6) No person is entitled to act as proxy for more than 10 members.

(7) At any meeting of the members of the building society the person presiding at the meeting may, in the event of an equality of votes, exercise a second or casting vote.

(8) Subject to this section, the voting rights of a member cannot be restricted by the rules of the building society.

(9) The rules of a building society may provide that no member is entitled to vote unless he or she holds a prescribed minimum of paid-up capital in the building society.

(10) The voting rights of a member who has borrowed money from the building society and is in default in repayment may be restricted by the rules of the building society.

(11) The Commission may not register any rule under which the right of a member who has borrowed money from the building society is limited or excluded unless it approves of the limitation or exclusion.

(12) The rules of a building society may provide that only those persons who are members at a specified time and have been members for a specified period preceding any vote may take part in the vote.

(13) Nothing in this section prevents a member who has been appointed to represent a corporate member of a building society or to act as the proxy of a member from voting both in the person's capacity as a member and in that other capacity.

Special resolutions

129. (1) For the purposes of this Act, a special resolution is a resolution passed by a majority of not less than two-thirds of those members who, being entitled to vote and present at the meeting either personally or by proxy, vote on the resolution.

(2) Unless a poll is demanded, a declaration by the person presiding at the meeting that a resolution has been carried by a specified majority is conclusive evidence of the fact.

(3) Notice of a proposed special resolution, setting out its terms, must be—

(a) given personally or by post to the members entitled to vote;

or

(b) advertised on two separate days in a newspaper circulating generally in the State and, where the building society is carrying on business as a building society in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory,

not less than 14 days before the date of the meeting at which a motion for the passing or adoption of the resolution is to be moved.

(4) A purported special resolution in relation to which notice has not been given in accordance with subsection (3) is of no effect.

(5) A building society must, within one month of a meeting at which a special resolution has been passed, submit the resolution to the Commission for registration.

(6) A special resolution is of no effect until registered.

(7) The Commission must register a special resolution of a building society if satisfied that the resolution was duly passed and is not contrary to any provision of this Act.

(8) This section applies in relation only to those matters that are required by this Act or the rules of a building society to be passed or approved by a special resolution.

Minutes

130. A building society must cause full and accurate minutes to be kept of every meeting of the board, and of every meeting of the members of the building society.

DIVISION III—REGISTERS AND INSPECTION

Registers

131. (1) A building society must keep such registers as are prescribed.

(2) Subject to this section, all registers required to be kept by a building society (whether pursuant to this section or any other provision of this Act) must be kept at the registered office of the building society and be kept in such manner, and contain such particulars, as may be prescribed.

(3) With the consent in writing of the Commission, all or any of the registers may be kept in an office of the building society other than its registered office.

(4) A building society may, as authorized by its rules, make an entry in any of its registers or accounts to indicate that money deposited with it is held in trust, but is not to be regarded as being affected by notice of any trust in respect of the money whether or not any such entry is made.

Inspection

132. (1) A building society must keep at its registered office available for inspection without fee by members of the building society, persons eligible for membership of the building society and its creditors—

(a) a copy of this Act and the regulations;

(b) a copy of the rules of the building society;

and

(c) a copy of the last accounts of the building society, together with a copy of the report of the auditor on those accounts.

(2) A building society must keep a copy of its rules available for inspection without fee by members of the building society at each branch office of the building society.

(3) A building society must, on request by a member of the building society furnish the member with particulars of his or her financial position with the building society as a member, shareholder, depositor or borrower.

(4) Subject to the regulations, a person may request a building society to furnish him or her with a copy of a register or any part of a register kept by the building society pursuant to this Act and, where such a request is made, the building society must send the copy to that person—

(a) if the building society requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the building society or within such longer period as the Commission approves;

or

(b) in any other case—within 21 days after the request is made or within such longer period as the Commission approves.

DIVISION IV—ACCOUNTS

Financial year

133. (1) The period from 1 July to the following 30 June is the financial year for a building society.

(2) If a building society is registered (otherwise than as a result of an amalgamation) on a day falling between 1 January and 30 June in any year, its first financial year may, if the building society so elects, extend to 30 June in the following year.

Financial years of groups

134. (1) The directors of a holding building society must take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding building society coincides with the financial year of the holding building society.

(2) The action referred to in subsection (1) must be taken in relation to a particular subsidiary not later than 12 months after the date on which the subsidiary became a subsidiary of the holding building society.

(3) Where the financial year of a holding building society and the financial year of each of its subsidiaries coincide, the directors of the holding building society must at all times take such action as is necessary to ensure that the financial year of any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

Accounting records to be kept

135. (1) A building society must—

(a) keep such accounting records as correctly record and explain the transactions of the building society (including any transactions as trustee) and the financial position of the building society;

and

(b) keep its accounting records in such a manner as will enable—

(i) the preparation from time to time of true and fair accounts of the building society;

and

- (ii) the accounts of the building society to be conveniently and properly audited in accordance with this Act.

(2) A building society must retain the accounting records kept under this section for a period of seven years after the completion of the transactions to which they relate.

(3) A building society must keep the accounting records at such a place or places as its directors think fit.

(4) Where any of the accounting records of a building society are kept at a place outside the State, the building society must keep at a place within the State determined by the directors such information as would enable true and fair accounts and any documents or reports required by this Act to be attached to the accounts to be prepared.

(5) The accounting records of a building society must be kept in writing in the English language or so as to enable the accounting records to be readily accessible and readily convertible into writing in the English language.

(6) A building society must make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the building society and by any other person authorized or permitted by or under this Act to inspect the accounting records of the building society.

(7) The Court may, on application by a director of a building society, make an order authorizing a registered company auditor acting for the director to inspect the accounting records of the building society.

(8) A registered company auditor who inspects accounting records pursuant to an order of the Court under subsection (7) must not disclose to a person other than the director on whose application the order was made any information acquired in the course of the inspection.

(9) The cost of an inspection conducted pursuant to subsection (7) must be met by the building society.

Profit and loss account, balance-sheet, group accounts and directors' statements

136. (1) The directors of a building society must, before the day on which notice of an annual general meeting of the building society is first advertised, or, in any case, not less than three weeks before the end of the period within which an annual general meeting is required under Division II to be held, cause to be prepared—

- (a) a profit and loss account for the last financial year of the building society, being a profit and loss account that gives a true and fair view of the profit or loss of the building society for that financial year;

and

- (b) a balance-sheet as at the end of the last financial year of the building society, being a balance-sheet that gives a true and fair view of the state of affairs of the building society as at the end of that financial year.

(2) Where, at the end of a financial year of a building society, the building society is a holding building society, the directors of the building society must, before the day on which notice of the next annual general meeting of the building society is first advertised, or, in any case, not less than three weeks before the end of the period within which the next annual general meeting is required under Division II to be held, cause to be prepared group accounts dealing with—

(a) the profit or loss of the building society and its subsidiaries for their respective last financial years;

and

(b) the state of affairs of the building society and its subsidiaries as at the end of their respective last financial years,

and giving a true and fair view of the profit or loss and the state of affairs so far as those matters concern members of the holding building society.

(3) The directors of a building society must take reasonable steps to ensure that the accounts of the building society and, if it is a holding building society for which group accounts are required, the group accounts, are audited as required by this Part before the day before which the accounts are required by this section to have been prepared.

(4) The directors of a building society must cause to be attached to, or endorsed on, the accounts or group accounts in relation to the building society the auditor's report relating to those accounts or group accounts, as the case may be, that is furnished to the directors in accordance with Division V.

(5) The directors must, before the accounts referred to in subsection (1) are prepared, take reasonable steps—

(a) to ascertain what action has been taken in relation to the writing off of bad debts and the making of provisions for doubtful debts and to cause all known bad debts to be written off and adequate provision to be made for doubtful debts;

(b) to ascertain whether any current assets, other than current assets to which paragraph (a) applies, are unlikely to realize in the ordinary course of business their value as shown in the accounting records of the building society and, if so, to cause—

(i) those assets to be written down to an amount that they might be expected so to realize;

or

(ii) adequate provision to be made for the difference between the amount of the value as so shown and the amount that they might be expected so to realize;

and

- (c) to ascertain whether any non-current asset is shown in the books of the building society at an amount that, having regard to its value to the building society as a going concern, exceeds the amount that it would have been reasonable for the building society to expend to acquire that asset as at the end of the financial year and, unless adequate provision for writing down that asset is made, to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading by reason of the overstatement of the amount of that asset.

(6) Without limiting the effect of the preceding provisions of this section, the directors of a building society must ensure that the accounts of the building society and, if it is a holding building society for which group accounts are required, the group accounts comply with such of the prescribed requirements as are relevant to those accounts or group accounts, as the case may be, but where accounts or group accounts prepared in accordance with those requirements would not otherwise give a true and fair view of the matters required by this section to be dealt with in the accounts or group accounts, the directors of the building society must add such information and explanations as will give a true and fair view of those matters.

(7) Without limiting the effect of the preceding provisions of this section, but subject to subsection (9), the directors of a building society must ensure that the accounts of the building society and, if it is a holding building society for which group accounts are required, the group accounts, comply with such approved accounting standards as are declared by the Minister, by notice published in the *Gazette*, to be applicable to those accounts subject to such modifications (if any) as are specified in the notice.

(8) The Minister may, by notice published in the *Gazette*, vary or revoke a notice published for the purposes of subsection (7).

(9) Where the accounts of a building society or the group accounts of a holding building society would not, if prepared in accordance with an applicable approved accounting standard, give a true and fair view of the matters required by this Division to be dealt with in those accounts or group accounts, the directors of the building society or holding building society are not required to comply with subsection (7).

(10) The directors of a building society must cause to be attached to any accounts required to be laid before an annual general meeting, before the auditor reports on the accounts under this Part, a statement made in accordance with a resolution of the directors and signed by not less than two directors—

- (a) stating whether in the opinion of the directors—
- (i) the profit and loss account is drawn up so as to give a true and fair view of the profit or loss of the building society for the financial year;
 - (ii) the balance-sheet is drawn up so as to give a true and fair view of the state of affairs of the building society as at the end of the financial year;
- and
- (iii) as at the date of the statement, there are reasonable grounds to believe that the building society will be able to pay its debts as and when they fall due;

(b) stating whether the accounts comply with applicable approved accounting standards;

and

(c) if the accounts do not comply with a particular applicable approved accounting standard—

(i) stating why the accounts would not, if they had been prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in the accounts;

and

(ii) giving particulars of the quantified financial effect on the accounts of the failure to comply with that standard.

(11) The directors of a building society that is a holding building society must cause to be attached to group accounts required to be laid before an annual general meeting, before the auditor reports on the group accounts under this Part, a statement made in accordance with a resolution of the directors of the building society and signed by not less than two directors—

(a) stating whether, in the opinion of the directors, the group accounts are so drawn up as to give a true and fair view of—

(i) the profit or loss of the building society and its subsidiaries for their respective last financial years;

and

(ii) the state of affairs of the building society and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the building society;

(b) stating whether the group accounts comply with applicable approved accounting standards;

and

(c) if the group accounts do not comply with a particular applicable approved accounting standard—

(i) stating why the group accounts would not, if they had been prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts;

and

(ii) giving particulars of the quantified financial effect on those accounts of the failure to comply with that standard.

(12) The directors of a building society—

(a) must, in forming an opinion as to the matters referred to in subsection (10)(a)(i) and (ii) for the purposes of a statement under that subsection, have regard to—

(i) circumstances that have arisen;

and

(ii) information that has become available,

since the end of the financial year to which the accounts relate, being circumstances or information that would, if the accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts;

and

(b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of such adjustments not having been made.

(13) The directors of a building society that is a holding building society—

(a) must, in forming an opinion as to the matters referred to in subsection (11)(a) for the purposes of a statement under that subsection, have regard to circumstances that have arisen, or information that has become available, since—

(i) in the case of circumstances or information relating to the building society—the end of the financial year of the building society to which those accounts relate;

or

(ii) in the case of circumstances or information relating to a subsidiary—the end of the financial year of the subsidiary to which those accounts relate,

being circumstances or information that would, if those accounts were being prepared at the time the statement is made, have affected the determination of an amount or a particular in those accounts;

and

(b) must, if adjustments have not been made in those accounts to reflect circumstances or information of a kind referred to in paragraph (a), being circumstances or information relevant to an understanding of those accounts, or of an amount or particular in those accounts, include in the statement such information and explanations as will prevent those accounts, or that amount or particular, from being misleading as a result of those adjustments not having been made.

Directors' reports

137. (1) The directors of a building society, other than a building society to which subsection (2) applies, must, before (but not more than three weeks before) the day before which the accounts for its last financial year are required under this Division to be prepared, cause a report to be prepared, in accordance with a resolution of the directors and signed by at least two directors—

- (a) stating the names of the directors in office at the date of the report and giving, in respect of each of the directors, particulars of—
 - (i) the qualifications, experience and special responsibilities (if any) of the director;
 - (ii) shares in the building society or in a corporation related to the building society being particulars required to be kept in a register by the building society in respect of that director pursuant to Division I;

and

 - (iii) any interest of the director in a contract or proposed contract with the building society, being an interest declared by the director under Division I since the commencement of this Act or the date on which particulars were last given under this paragraph;
- (b) stating—
 - (i) the principal activities of the building society in the course of its last financial year and any significant change in the nature of those activities that occurred during that financial year;
 - (ii) the net amount of the profit or loss of the building society for that financial year after provision for income tax;

and

 - (iii) the amount (if any) that the directors recommend should be paid by way of dividend or, in relation to permanent shares, interest out of revenue, and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (2);
- (c) containing a review of the operations of the building society during that financial year and of the results of those operations;
- (d) giving particulars of any significant change in the state of affairs of the building society that occurred during that financial year;
- (e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—
 - (i) the operations of the building society;

(ii) the results of those operations;

or

(iii) the state of affairs of the building society,

in financial years subsequent to that financial year;

and

(f) referring to—

(i) likely developments in the operations of the building society;

and

(ii) the expected results of those operations,

in financial years subsequent to that financial year.

(2) The directors of a building society that, at the end of its last financial year, was a holding building society must, before (but not more than three weeks before) the day before which the group accounts for that financial year are required under this Division to be prepared, cause to be made out a report, made in accordance with a resolution of the directors and signed by at least two directors—

(a) stating the names of the directors in office at the date of the report and giving, in respect of each of the directors, particulars of—

(i) the qualifications, experience and special responsibilities (if any) of the director;

(ii) shares in the building society or in a corporation related to the building society being particulars required to be kept in a register by the building society in respect of that director pursuant to Division I;

and

(iii) any interest of the director in a contract or proposed contract with the building society, being an interest declared by the director under Division I since the commencement of this Act or the date on which particulars were last given under this paragraph;

(b) stating—

(i) the principal activities of the corporations in the group in the course of that financial year and any significant change in the nature of those activities that occurred during that period;

- (ii) the net amount of the consolidated profit or loss of the corporations in the group for that financial year after provision for income tax and after deducting from that consolidated profit or loss any amounts that should properly be attributed to any person other than a corporation in the group;

and

- (iii) the amount (if any) that the directors of the building society recommend should be paid by way of dividend or, in relation to permanent shares, interest out of revenue, and any such amounts that have been paid or declared since the commencement of that financial year, indicating which of those amounts (if any) have been shown in a previous report under this subsection or subsection (1);

- (c) containing a review of the operations of the group during that financial year and of the results of those operations;

- (d) giving particulars of any significant change in the state of affairs of the group that occurred during that financial year;

- (e) giving particulars of any matter or circumstance that has arisen since the end of that financial year and that has significantly affected or may significantly affect—

- (i) the operations of the group;

- (ii) the results of those operations;

or

- (iii) the state of affairs of the group,

in financial years subsequent to that financial year;

and

- (f) referring to—

- (i) likely developments in the operations of the group;

and

- (ii) the expected results of those operations,

in financial years subsequent to that financial year.

(3) If, in the opinion of the directors of a building society, it would prejudice the interests of the building society if any particular information required under subsection (1)(f) or (2)(f) were to be included in a report—

- (a) the information need not be so included;

and

- (b) the report must contain a statement that some, or all (as the case may require) of the information required under subsection (1)(f) or (2)(f) has not been included in the report.

(4) Where a building society or a subsidiary of a holding building society has at any time granted to a person an option to have issued to him or her shares in the building society or subsidiary, the directors of the building society must state in the report made under this section—

- (a) in the case of an option granted by a holding building society or subsidiary of a holding building society—the name of the body granting the option;
- (b) in the case of an option granted during the financial year or since the end of the financial year—
 - (i) the name of the person to whom the option was granted or, where it was granted generally to all the holders of shares or debentures or of a class of shares or debentures of that corporation, that the option was so granted;
 - (ii) the number and classes of shares in respect of which the option was granted;
 - (iii) the date of expiration of the option;
 - (iv) the basis upon which the option is or was to be exercised;

and

- (v) whether any person entitled to exercise the option had or has any right, by virtue of the option, to participate in any share issue of any other corporation;
- (c) particulars of shares issued, during the financial year or since the end of the financial year, by virtue of the exercise of an option;

and

- (d) the number and classes of unissued shares under option as at the date of the report, the prices, or the method of fixing the prices, of issue of those shares, the dates of expiration of the options and particulars of the rights (if any) of the holders of the options to participate by virtue of the options in any share issue of any other corporation.

(5) Where any of the particulars required by subsection (4) have been stated in a previous report, they may be stated by reference to that report.

(6) The directors of a building society must state in the report whether, since the end of the previous financial year, a director of the building society has received or become entitled to receive a benefit, other than—

(a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown in the accounts or, if the building society is a holding building society, the group accounts;

or

(b) the fixed salary of a full-time employee of the building society or of a subsidiary of the building society,

by reason of a contract made by the building society or subsidiary with the director or with a firm of which he or she is a member, or with a company in which he or she has a substantial financial interest and, if so, the general nature of the benefit.

(7) Where there is attached to or included with a report of the directors laid before a building society at its annual general meeting a statement, report or other document relating to affairs of the building society or any of its subsidiaries, not being a statement, report or document required by this Act to be laid before the building society in general meeting, the statement, report or other document shall, for the purposes of section 203, be deemed to be part of that first mentioned report.

Rounding off of amounts in accounts and reports

138. (1) The regulations may make provision permitting every building society, or every building society included in a class of building societies specified in the regulations, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Act, in substitution for an amount that the building society would, but for this section, be required or permitted to set out in the accounts or report, an amount ascertained in accordance with the regulations but not being an amount that is more than \$500 greater or less than the first mentioned amount.

(2) For the purposes of subsection (1), the insertion of zero is to be taken to be the insertion of an amount.

Directors of holding building society must obtain information from subsidiaries

139. (1) Subject to subsection (3), the directors of a holding building society must not cause the group accounts or the statement or report relating to them to be prepared unless the directors have available to them sufficient information, in relation to each subsidiary, to enable them to ensure—

(a) that the group accounts will give a true and fair view of—

(i) the profit or loss of the holding building society and its subsidiaries for their respective last financial years;

and

- (ii) the state of affairs of the holding building society and its subsidiaries as at the end of their respective last financial years,

so far as they concern members of the holding building society;

and

- (b) that neither the statement nor the report will be false or misleading in a material particular.

(2) The directors of a subsidiary must, at the request of the directors of the holding building society, supply to the holding building society all the information that is required by the directors of the holding building society for the preparation of the group accounts, the statement and the report referred to in subsection (1).

(3) Where the directors of a holding building society, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding building society for the preparation of the group accounts, the statement and the report referred to in subsection (1), within the period within which they are respectively required by this Act to be prepared—

- (a) the directors of the holding building society must cause the group accounts, statement and report to be prepared without incorporating or including the information relating to that subsidiary, but—

- (i) they must include in the group accounts, statement or report, as the case requires, a description of the nature of the information that has not been obtained, and must include such qualifications and explanations as are necessary to prevent the group accounts, statement or report from being misleading;

and

- (ii) they may qualify accordingly that part of the statement that is made in pursuance of section 136(11)(a);

and

- (b) where the directors of the holding building society have caused the group accounts, statement and report to be prepared in accordance with paragraph (a), they must, within one month after receiving any of that information from the directors of the subsidiary—

- (i) lodge with the Commission a statement setting out or summarizing the information and containing such qualifications and explanations, by the directors of the holding building society, of the group accounts, statement or report as are necessary having regard to the information received from the directors of the subsidiary;

and

- (ii) send a copy of that statement to each member of the building society.

Accounts and reports to be laid before annual general meeting

140. (1) The directors of a building society must cause to be laid before each annual general meeting of the building society—

- (a) a copy of the accounts made out in accordance with section 136 for the last financial year of the building society;
- (b) in the case of a building society that, at the end of its last financial year before the relevant annual general meeting, was not a holding building society—a copy of the directors' report made out in accordance with section 137 in respect of that financial year;
- (c) in the case of a building society that, at the end of its last financial year before the relevant annual general meeting, was a holding building society—a copy of the group accounts made out in accordance with section 136 in relation to that financial year and a copy of the directors' report made out in accordance with section 137 in respect of that financial year;
- (d) a copy of any auditor's report required by section 136 to be attached to or endorsed upon the accounts or group accounts of the building society;

and

- (e) a copy of the statement by the directors required by section 136 to be attached to the accounts or group accounts of the building society.

(2) Copies of the accounts, statements and reports required to be laid before an annual general meeting by subsection (1) must be made available to members of the building society at the building society's head office and at each of its branch offices from the day before which those documents are required under this Division to have been prepared until the holding of the annual general meeting.

Failure to comply with this Division

141. (1) A director of a building society who fails to take all reasonable steps to comply with or secure compliance with any provision of this Division is guilty of an offence.

Penalty:

- (a) if the offence is committed with intent to deceive or defraud creditors of the building society or creditors of any other person or for a fraudulent purpose—a division 4 fine or division 4 imprisonment;

or

- (b) in any other case—a division 6 fine.

(2) In any proceedings against a person for an offence against subsection (1) arising out of the accounts of a building society or the group accounts of a holding building society not complying with an applicable approved accounting standard, the onus of proving that the accounts would not, if prepared in accordance with that standard, have given a true and fair view of the matters required by this Division to be dealt with in those accounts lies on that person.

(3) In any proceedings for an offence against subsection (1) arising out of an omission from the accounts of a building society or the group accounts of a holding building society, it is a defence to prove that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by this Division to be dealt with in those accounts.

(4) If, after the expiration of the period within which any accounts of a building society or any report of the directors of a building society is or are required under this Division to be prepared, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a date and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceedings for a failure to comply with the requirements of this Division, proof of the failure to produce the accounts or report as required by the notice is, in the absence of proof to the contrary, proof that the accounts or report were not prepared within that period.

DIVISION V—AUDIT

Qualifications of auditors

142. (1) Subject to this section, a person must not—

(a) consent to be appointed as auditor of a building society;

(b) act as auditor of a building society;

or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a building society,

if—

(d) the person is not a registered company auditor;

(e) the person is not ordinarily resident in the State;

(f) the person is indebted in an amount exceeding \$5 000 to the building society or to a subsidiary of the building society;

or

(g) the person—

(i) is an officer of the building society;

(ii) is a partner, employer or employee of an officer of the building society;

or

(iii) is a partner or employee of an employee of an officer of the building society.

(2) Subject to this section, a firm must not—

(a) consent to be appointed as auditor of a building society;

(b) act as auditor of a building society;

or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a building society,

unless—

(d) at least one member of the firm is a registered company auditor who is ordinarily resident in the State;

(e) where the business name under which the firm is carrying on business is not registered under the *Business Names Act, 1963*—there has been lodged with the Commission a return in the prescribed form showing, in relation to each member of the firm, his or her full name and his or her address as at the time when the firm so consents, acts or prepares a report;

(f) neither the firm nor the member of the firm responsible for conducting the audit or signing the report is indebted in an amount exceeding \$5 000 to the building society or to a subsidiary of the building society;

(g) no member of the firm is—

(i) an officer of the building society;

(ii) a partner, employer or employee of an officer of the building society;

or

(iii) a partner or employee of an employee of an officer of the building society;

and

(h) no officer of the building society receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

(3) For the purposes of subsections (1) and (2), a person is to be regarded as being an officer of a building society if—

(a) he or she is an officer of a subsidiary of the building society;

or

- (b) except where the Commission, if it thinks fit in the circumstances of the case directs that this paragraph not apply in relation to the person—he or she has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the building society or of a subsidiary of the building society.

(4) For the purposes of this section, a person is not to be regarded as being an officer of a building society by reason only of being or having been the liquidator of the building society or of a subsidiary of the building society.

(5) For the purposes of this section, a person is not to be regarded as being an officer of a building society by reason only of having been appointed as auditor of that building society or of a subsidiary of the building society or, for any purpose relating to taxation, a public officer of a corporation or by reason only of being or having been authorized to accept on behalf of the building society or a subsidiary of the building society service of process or any notices required to be served on the building society or subsidiary.

(6) The appointment of a firm as auditor of a building society is to be regarded as being an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, as at the date of the appointment.

(7) Where a firm that has been appointed as auditor of a building society is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both—

- (a) a person who was an auditor of the building society by virtue of subsection (6) and who has so retired or withdrawn from the firm as previously constituted is to be regarded as having resigned as auditor of the building society as from the day of that retirement or withdrawal, but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 145 does not apply to that resignation;
- (b) a person who is a registered company auditor and who is so admitted to the firm is to be regarded as having been appointed as an auditor of the building society as from the date of admission to the firm;

and

- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the building society,

but nothing in this subsection affects the operation of subsection (2).

(8) Except as provided by subsection (7), the appointment of the members of a firm as auditors of a building society by virtue of the appointment of the firm as auditor of the building society is not affected by the dissolution of the firm.

(9) A report or notice that purports to be made or given by a firm appointed as auditor of a building society is not to be regarded as having been duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(10) If, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a building society, or prepares a report required by this Act to be prepared by an auditor of a building society, each member of the firm is guilty of an offence.

(11) A person must not—

(a) if appointed auditor of a building society—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the building society;

or

(b) if a member of a firm that has been appointed auditor of a building society—knowingly disqualify the firm while the appointment continues from acting as auditor of the building society.

(12) For the purposes of this section—

"officer of a building society" includes—

(a) an employee of the building society;

(b) a receiver, or receiver manager, of the property or part of the property of the building society;

and

(c) an official manager or deputy official manager of the building society.

Appointment of auditors

143. (1) Within one month after the date on which a building society is incorporated, the directors of the building society must appoint, unless the building society at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the building society.

(2) A person or firm appointed as auditor of a building society under subsection (1) holds office, subject to this Division, until the first annual general meeting of the building society.

(3) A building society must—

(a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the building society;

and

- (b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the building society, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(4) A person or firm appointed as auditor under subsection (3) holds office until death or removal or resignation from office in accordance with section 145 or until ceasing to be capable of acting as auditor by reason of section 142(1) or (2).

(5) Within one month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the building society, if there is no surviving or continuing auditor of the building society, the directors must, unless the building society at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(6) While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(7) A building society must not, and the directors of a building society must not, appoint a person or firm as auditor of the building society unless that person or firm has, before the appointment, consented by notice in writing given to the building society or to the directors to act as auditor and has not withdrawn consent by notice in writing given to the building society or to the directors.

(8) A notice under subsection (7) given by a firm must be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

(9) If a building society appoints a person or firm as auditor of the building society in contravention of subsection (7), the purported appointment does not have any effect and the building society and any officer of the building society who is in default are each guilty of an offence.

(10) Where an auditor of a building society is removed from office at a general meeting in accordance with section 145—

- (a) the building society may at that meeting (without adjournment), by a resolution passed by a majority of members of the building society as, being entitled so to do, vote in person, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with section 144(3);

or

- (b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a date not earlier than 20 days and not later than 30 days after the day of the meeting and the building society may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the building society from a member of the building society at least 14 clear days before the date to which the meeting is adjourned.

(11) If after the removal from office of an auditor of a building society the building society fails to appoint another auditor under subsection (10), the building society must, within seven days after the failure, notify the Commission accordingly, whereupon the Commission must, unless there is another auditor of the building society whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor, appoint as auditor or auditors of the building society a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(12) Subject to subsection (11), if a building society does not appoint an auditor when required by this Act to do so, the Commission may, on the application in writing of a member of the building society, appoint as auditor or auditors of the building society a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

(13) A person or firm appointed as auditor of a building society under subsection (5), (10), (11) or (12) holds office, subject to this Division, until the next annual general meeting of the building society.

(14) A director of a building society who fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (5) is guilty of an offence.

Nomination of auditors

144. (1) Subject to this section, a building society is not entitled to appoint a person or firm as auditor of the building society at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of nomination of the person or firm as auditor was given to the building society by a member of the building society—

(a) before the meeting was convened;

or

(b) not less than three weeks before the meeting.

(2) If a building society purports to appoint a person or firm as auditor of the building society in contravention of subsection (1), the purported appointment is of no effect and the building society and any officer of the building society who is in default are each guilty of an offence.

(3) Where notice of nomination of a person or firm for appointment as auditor of a building society is received by the building society, whether for appointment at a meeting or an adjourned meeting referred to in section 143(10) or at an annual general meeting, the building society must not less than seven days before the meeting or at the time notice of the meeting is given—

(a) send a copy of the notice of nomination to each person or firm nominated and to each auditor of the building society;

and

(b) cause a copy of the notice of nomination to be exhibited in a conspicuous place at the head office and each branch office of the building society until the day of the meeting.

Removal and resignation of auditors

145. (1) An auditor of a building society may be removed from office by special resolution at a general meeting of the building society, but not otherwise.

(2) If notice of a special resolution to remove an auditor is given, the building society must forthwith send a copy of the notice to the auditor and to the Commission.

(3) Within seven days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the building society and the building society must, if so requested by the auditor, cause a copy of the representations to be exhibited in a conspicuous place at the head office and each branch office of the building society up until the day of the meeting at which the resolution is to be considered.

(4) Unless the Commission on the application of the building society orders otherwise, the building society must be sent a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to the right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

(5) Upon the removal from office of an auditor of a building society, the building society must forthwith give to the Commission notice in writing of the removal.

(6) An auditor of a building society may, by notice in writing given to the building society, resign as auditor of the building society if—

(a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and stated the reasons for the application and has, at or about the same time as the auditor gave the notice to the Commission, notified the building society in writing of the application to the Commission;

and

(b) the auditor has received the consent of the Commission.

(7) The Commission must, as soon as practicable after receiving a notice from an auditor under subsection (6), notify the auditor and the building society whether it consents to the resignation.

(8) A statement made by an auditor in an application to the Commission under subsection (6) or in answer to an inquiry by the Commission relating to the reasons for the application—

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor;

and

(b) may not be made the ground of a prosecution, action or suit against the auditor,

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

(9) Subject to subsection (10), the resignation of an auditor takes effect—

- (a) on the date (if any) specified for the purpose in the notice of resignation;
 - (b) on the date on which the Commission gives its consent to the resignation;
- or
- (c) on the date (if any) fixed by the Commission for the purpose,

whichever last occurs.

(10) Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of section 142(2)(d) of acting as auditor of a building society, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the building society) give reasonable notice to the building society of his or her retirement or withdrawal and upon receipt of the notice by the building society the office of auditor of the building society becomes vacant.

(11) Within 14 days after the receipt of a notice of resignation, retirement or withdrawal from an auditor of a building society or, where an auditor of a building society is removed from office, within 14 days after the removal, the building society must—

- (a) lodge a notice of the resignation, retirement or withdrawal, or removal, in the prescribed form with the Commission;
- and
- (b) where there is a trustee for the holders of securities issued by the building society—give to the trustee a copy of the notice lodged with the Commission.

Effect of winding up on office of auditor

146. (1) An auditor of a building society ceases to hold office if—

- (a) a special resolution is passed for the voluntary winding up of the building society;
 - (b) an order is made by the Court for the winding up of the building society;
- or
- (c) the building society is wound up on the certificate of the Commission.

Fees and expenses of auditors

147. The reasonable fees and expenses of an auditor of a building society are payable by the building society.

Powers and duties of auditors as to reports on accounts

148. (1) An auditor of a building society must report to the members on the accounts required to be laid before the building society at the annual general meeting and on the building society's accounting records and other records relating to those accounts and, if it is a holding building society for which group accounts are required, must also report to the members on the group accounts.

(2) An auditor must, in a report under subsection (1), state—

(a) whether the accounts and, if the building society is a holding building society for which group accounts are required, the group accounts are in the opinion of the auditor properly prepared—

(i) so as to give a true and fair view of the matters required by section 136 to be dealt with in the accounts and, if there are group accounts, in the group accounts;

(ii) in accordance with the provisions of this Act;

and

(iii) in accordance with applicable approved accounting standards;

(b) if, in the opinion of the auditor, the accounts or, if the building society is a holding building society for which group accounts are required, the group accounts have not been prepared in accordance with a particular applicable approved accounting standard—

(i) whether, in the auditor's opinion, the accounts or group accounts, as the case may be, would, if prepared in accordance with that standard, have given a true and fair view of the matters required by section 136 to be dealt with in those accounts;

(ii) if, in the auditor's opinion, the accounts or group accounts, as the case may be, would not, if so prepared, have given a true and fair view of those matters—the reasons for that opinion;

(iii) if the directors have caused a statement to be attached to the accounts or group accounts, as the case may be, giving particulars of the quantified financial effect on those accounts of the failure to so prepare the accounts—the auditor's opinion of those particulars;

and

(iv) in a case to which neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts, as the case may be, of the failure to so prepare those accounts;

(c) in the case of group accounts—

(i) the names of the subsidiaries (of which he or she has not acted as auditor);

- (ii) where there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of a subsidiary of which he or she has not acted as auditor, and he or she has not examined the auditor's report (if any) on those accounts—the name of that subsidiary;

and

- (iii) where the auditor's report on the accounts of a subsidiary was made subject to any qualifications or included any comment made under subsection (4)—the name of that subsidiary and particulars of the qualification or comment;

- (d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained;

and

- (e) if he or she is not satisfied as to any matter referred to in paragraph (a) or (b), the reasons for not being so satisfied.

(3) It is the duty of an auditor of a building society to form an opinion as to each of the following matters:

- (a) whether he or she has obtained all the information and explanations that he or she required;
- (b) whether proper accounting records and other records, including registers, have been kept by the building society as required by this Act;
- (c) whether the returns received from branch offices of the building society are adequate;

and

- (d) where the building society is a holding building society—
 - (i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether he or she has received satisfactory information and explanations as required by him or her for that purpose;

and

- (ii) whether the procedures and methods used by the building society and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation,

and the auditor must state in the report under subsection (1) particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

(4) The auditor's report under subsection (1) must be furnished by the auditor to the directors of the building society in sufficient time to enable the building society to comply with the requirements of section 136 in relation to that report.

(5) The auditor's report under subsection (1) must be attached to or endorsed on the accounts or group accounts and must, if a member so requires, be read before the building society at the annual general meeting, and must be open to inspection by a member at any reasonable time.

(6) The auditor must, when furnishing the report under subsection (1), also furnish to the directors of the building society a report in the prescribed form as to—

(a) the adequacy (in the auditor's opinion) of the systems adopted by the building society—

(i) to ensure compliance with the requirements of Part V;

and

(ii) to monitor and manage risks associated with its financial activities;

and

(b) any other matter of a prescribed kind.

(7) A building society must, within two business days after receipt of a report from its auditor under subsection (6), cause a copy of the report to be lodged with the Commission.

(8) An auditor of a building society has a right of access at all reasonable times to the accounting records and other records, including registers, of the building society, and is entitled to require from any officer of the building society such information and explanations as the auditor desires for the purposes of audit.

(9) An auditor of a holding building society for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding building society, such information and explanations in relation to the affairs of the subsidiary as the auditor requires for the purpose of report on the group accounts.

(10) An auditor of a building society or an agent authorized by the auditor in writing for the purpose is entitled to attend any general meeting of the building society and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that he or she attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor, and is entitled so to be heard notwithstanding that he or she retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.

(11) If an auditor of a building society becomes aware that the building society or the directors has or have made default in complying with section 127 or the provisions of section 140 relating to the laying of accounts or group accounts before the annual general meeting of the building society, the auditor must immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a copy of the accounts or group accounts and of the auditor's report on the accounts or group accounts.

(12) Except in a case to which subsection (11) applies, if an auditor, in the course of the performance of duties as auditor of a building society, is satisfied that—

(a) there has been a contravention of, or failure to comply with, any of the provisions of this Act;

and

(b) the circumstances are such that in the auditor's opinion the matter has not been or will not be adequately dealt with by comment in his or her report on the accounts or group accounts or by bringing the matter to the notice of the directors of the building society,

the auditor must immediately report the matter to the Commission by notice in writing.

(13) If an auditor of a building society or holding building society—

(a) is not satisfied that accounts of the building society, or group accounts of the holding building society comply with a particular applicable approved accounting standard;

or

(b) is of the opinion that accounts of the building society, or group accounts of the holding building society, do not comply with a particular applicable approved accounting standard,

the auditor must report the matter to the Commission in writing within seven days after furnishing to the directors of the building society or holding building society his or her report under this section.

(14) Where an auditor sends to the Commission a report on the accounts or group accounts of a building society or holding building society pursuant to subsection (13), the Commission may, by notice in writing, require the building society or holding building society to furnish to the Commission within seven days after service of the notice a copy of those accounts or group accounts.

Final audit on amalgamation, etc.

149. (1) Where—

(a) a building society is dissolved as part of an amalgamation under Part VII;

or

- (b) a building society is converted to a company, credit union or friendly society under Part VII,

the auditor of the building society must prepare a report containing prescribed statements and information relating to the accounts and accounting records of the building society for the financial year up to the date of dissolution of the building society or the date approved by the Minister for the conversion, as the case may be, and for the preceding financial year if an auditor's report has not been prepared relating to the accounts of the building society for that year.

(2) The provisions of section 148 relating to the rights of access of an auditor to the records of a building society and any subsidiary of a building society apply in relation to a report under this section as if it were a report required under section 148.

(3) A report prepared by an auditor under this section in relation to the accounts of a building society dissolved as part of an amalgamation must be furnished by the auditor to the directors of the amalgamated building society within two months after the date of the amalgamation and the directors of the amalgamated building society must in turn, within three months after the date of the amalgamation, forward each such auditor's report together with the accounts of each building society dissolved as part of the amalgamation to the Commission.

(4) A report prepared by an auditor under this section in relation to the accounts of a building society that is converted to a company, credit union or friendly society must be furnished by the auditor to the directors or members of the committee of management of the company, credit union or friendly society within two months after the date approved by the Minister for the conversion and the directors or members of the Committee of management of the company, credit union or friendly society must in turn, within three months after the date approved for the conversion, forward the auditor's report together with the accounts of the building society to the Commission.

Auditors and subsidiaries

150. (1) Notwithstanding that a subsidiary of the building society may be exempt from appointing an auditor under the *Companies (South Australia) Code*, a building society must ensure that the accounts and accounting records of any subsidiary of the building society are audited in accordance with the provisions of this Part.

(2) Where a subsidiary of a building society has not appointed an auditor to audit its accounts and accounting records under this Part, the auditor of the holding building society is also auditor of the subsidiary.

Obstruction of auditor

151. (1) An officer of a building society who refuses or fails without lawful excuse to allow an auditor of the building society access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the building society that are in the custody or control of that officer, or to give any information or explanation as and when required under those provisions or otherwise hinders, obstructs or delays an auditor in the performance of his or her duties or the exercise of his or her powers, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(2) An officer or auditor of a corporation who refuses or fails without lawful excuse to allow an auditor of a holding building society of the corporation access, in accordance with the provisions of this Act, to any accounting records and other records of the corporation in the custody or control of that officer or auditor, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of his or her duties or the exercise of his or her powers, is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

DIVISION VI—RETURNS

Returns

152. (1) A building society must furnish returns to the Commission in accordance with the regulations.

(2) The regulations may make provision with respect to—

- (a) the information to be contained in returns to the Commission;
- (b) the circumstances in which and the periods within which returns must be furnished to the Commission by building societies;
- (c) any documents that must be incorporated in or forwarded together with returns to the Commission.

(3) The Commission may, by instrument in writing, require a building society to furnish such further returns as the Commission may require.

(4) A return required pursuant to subsection (3) must contain the information stipulated in the instrument and be furnished as frequently as is required by the instrument.

(5) Without limiting the effect of this section, the information that may be required in a return or further return under this section may comprise or include information relating to—

- (a) a subsidiary of the building society;
- (b) a body corporate or other entity formed or acquired outside Australia by a subsidiary of the building society;
- (c) a body corporate or other entity (whether within or outside Australia) with which—
 - (i) the building society;
 - (ii) a subsidiary of the building society;
 or
 - (iii) a body corporate or other entity referred to in paragraph (b),
 has invested funds.

(6) The Commission may, by instrument in writing, require a building society to furnish with a return or further return under this section a report by a registered company auditor, or other person of a specified class, on specified matters to which the return relates.

Extension of time for lodging returns

153. (1) The Commission may, on application in writing by a building society, extend the period within which a return (whether required pursuant to this section or any other provision of this Act) must be furnished to the Commission.

(2) An application for extension of time under subsection (1) must be made to the Commission before the expiration of the period sought to be extended.

DIVISION VII—POWER TO GRANT RELIEF

Relief from requirements as to accounts or audit

154. (1) The directors of a building society may apply to the Commission in writing for an order relieving the directors, the building society or the auditor of the building society from compliance with any specified requirements of Division IV or V (other than section 135) and the Commission may make such an order unconditionally or subject to such conditions as it thinks fit.

(2) An application under subsection (1) must be accompanied by a statement in writing made in accordance with a resolution of the directors of the building society, signed by not less than two directors and stating the reasons for seeking the order.

(3) The Commission may require the directors making the application to supply such information relating to the operations of the building society, and of any subsidiary of the building society, as the Commission thinks necessary for the purpose of determining the application.

(4) Notice of an order under subsection (1) must be given to the building society to which it relates.

(5) The Commission may, where it considers it appropriate, make an order in respect of a specified class of building societies relieving the directors of a building society included in that class, a building society included in that class or the auditor of a building society included in that class, from compliance with any specified requirements of Division IV or V (other than section 135) and the order may be made unconditionally or subject to such conditions as the Commission thinks fit.

(6) Notice of an order under subsection (5) must be published in the *Gazette*.

(7) The Commission may not make an order in relation to a building society, or a class of building societies, under this section unless the Commission is of the opinion, in respect of each requirement of this Act specified in the order, that compliance with the requirement—

- (a) would render accounts or group accounts, or a report required in relation to those accounts, misleading;
- (b) would be inappropriate to the circumstances of the building society, or of the building societies included in that class, as the case may be;

or

- (c) would impose unreasonable burdens on—
- (i) the building society, an officer of the building society or the auditor of the building society;
- or
- (ii) the building societies, or officers or auditors of the building societies, included in that class,
- as the case may be.

(8) An order under this section may be limited in its effect to a period specified in the order.

(9) The Commission may, on application by the directors of a building society or on its own initiative, revoke or suspend an order under this section.

(10) A revocation or suspension under subsection (9) does not take effect—

- (a) in the case of an order under subsection (1)—until written notice of the revocation or suspension is given to the building society;
- or
- (b) in the case of an order under subsection (5)—until notice of the revocation or suspension is published in the *Gazette*.

PART VII

RESTRUCTURING OF BUILDING SOCIETIES

DIVISION I—RESTRUCTURING REVIEW COMMITTEE

The Restructuring Review Committee

155. (1) The *Restructuring Review Committee* is established.

(2) The Committee is to consist of four or more persons appointed by the Minister of whom—

(a) one must be the Commissioner for Corporate Affairs or a nominee of the Commissioner;

(b) one must be a nominee of the Treasurer;

(c) one must be a nominee of the Minister of Housing and Construction;

and

(d) one must be a person appointed by the Minister, after consultation with associations, to represent the interests of building societies.

(3) The Commissioner or nominee of the Commissioner is to be the presiding member of the Committee.

(4) Subject to subsection (5), the Minister may appoint a suitable person to be a deputy of a member of the Committee, and the deputy, while acting in the absence of that member, has all the powers, rights and duties of that member.

(5) The Minister may not appoint a person as the deputy of a member appointed under subsection (2)(b) or (c) unless that person has first been nominated by the Treasurer or the Minister of Housing and Construction respectively.

(6) A member of the Committee appointed under subsection (2)(d)—

(a) must be appointed for a term of office of three years;

(b) is, on the expiration of a term of office, eligible for reappointment;

and

(c) ceases to be a member of the Committee if the member—

(i) is removed from office by the Minister for neglect of duty, dishonourable conduct or mental or physical incapacity;

(ii) resigns by notice in writing addressed to the Minister;

or

(iii) completes a term of office and is not reappointed.

(7) The other members of the Committee hold office at the pleasure of the Minister.

Quorum, etc.

156. (1) A quorum of the Committee consists of a number of members equal to—

(a) if the total number of members for the time being is even—half that number plus one;

or

(b) if the total number of members for the time being is odd—the first integer that is greater than half that number,

and no business may be transacted at a meeting of the Committee unless a quorum is present.

(2) A decision in which a majority of the members present at a meeting concur is a decision of the Committee.

(3) The presiding member of the Committee must preside at any meeting of the Committee at which he or she is present.

(4) In the absence of the presiding member from a meeting of the Committee, the deputy of the presiding member must preside, and in the absence of both the presiding member and his or her deputy the members present must decide who is to preside at that meeting.

(5) Subject to this Act, the business of the Committee may be conducted in such manner as the Committee determines.

Validity of acts of the Committee and immunity of its members

157. (1) An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) No liability attaches to a member of the Committee for an act or omission by the member or the Committee in good faith and in the exercise or purported exercise of powers or functions, or in the discharge, or purported discharge, of duties under this Act.

Functions and powers of Committee

158. (1) The Committee has the functions of examining and making recommendations to the Minister with respect to—

(a) any proposal for amalgamation under Division II;

(b) any proposal for conversion of a building society to a company, credit union or friendly society under Division III;

and

- (c) any proposal that would result in a member of a building society or a group of associated members holding shares in the building society the total nominal value of which exceeds—
 - (i) the limit fixed under Part IV;
 - or
 - (ii) a limit approved by the Minister under Division IV in relation to that member or group,

that is referred to the Committee pursuant to Division IV.

(2) The Committee may, where it reasonably requires such information for the performance of its functions—

- (a) examine, or require copies of, information contained in registers or other records kept by the Commission;
- or
- (b) by notice in writing, require a building society, foreign building society or other person involved in or affected by a proposal referred to the Committee pursuant to Division IV, to furnish to it within a specified period information specified in the notice.

(3) The Committee may, for the purpose of performing its functions, require the Commission to exercise its powers of inspection under Part II or any other power that the Commission has to obtain information under or for the purposes of this Act.

DIVISION II—AMALGAMATION

Interpretation

159. In this Division—

"building society" means a local building society or a foreign building society:

"foreign building society" means a building society incorporated in another State or Territory of the Commonwealth whether or not registered as a foreign building society under this Act:

"local building society" means a building society registered and incorporated under this Act:

"property" includes all estates and interests in property, whether real or personal, legal or equitable or vested or contingent.

Application for amalgamation

160. (1) Application may be made to the Commission for an amalgamation of building societies under which—

- (a) each of the building societies concerned is dissolved and a new local building society or foreign building society is registered under this Act;

or

- (b) a local building society or foreign building society continues to be registered, or a foreign building society is newly registered, under this Act and the other building society or each of the other building societies concerned is dissolved.

(2) The application must be made in the prescribed form by each building society concerned in the amalgamation and must be accompanied by—

- (a) two copies of the proposed rules or constitution of any building society that is to be registered as a result of the amalgamation;
- (b) a statement setting out the terms on which the proposed amalgamation is to take effect;
- (c) in the case of an application involving registration of a foreign building society—the statements and documents required to accompany an application for registration of a foreign building society under Part X;

and

- (d) such other documents or information as the Commission may require.

(3) Subject to this section, application may not be made under this section unless the terms of the proposed amalgamation have been approved by not less than the prescribed number of members of each local building society that is a party to the application voting in a postal ballot conducted in accordance with the regulations.

(4) Approval by members voting in a postal ballot is not required in respect of a proposed amalgamation if the Commission has determined, on application by the local building societies concerned, that the proposal is of such a nature that reference to the *Restructuring Review Committee* under Division IV is not warranted, but, in that event, each of the building societies must, subject to this section, approve the proposal by special resolution.

(5) Each local building society concerned in a proposed amalgamation must before making an application under this section send to each of its members—

- (a) a copy of such reports, valuations and other material prepared by independent experts as may be required and approved by the Commission;

and

- (b) a statement, the contents of which have been approved by the Commission, relating to—
 - (i) its own financial position and the financial position of any other building society concerned in the amalgamation;
 - (ii) the reasons for the proposed amalgamation;
 - (iii) any interest that its officers or the officers of any other building society concerned may have in the amalgamation;

- (iv) any compensation or other consideration proposed to be paid to its officers or the officers of any other building society concerned arising out of the amalgamation;
 - (v) the payments to be made to its members or the members of any other building society concerned arising out of the amalgamation;
- and
- (vi) such other matters as the Commission may direct.

(6) The part of a statement under subsection (5) relating to the financial position of a building society must include—

- (a) the profit and loss account of the building society for the period up until a day not more than six months before the proposed date of amalgamation, being an account that gives a true and fair view of the profit or loss of the building society for that period;
- (b) a balance-sheet as at the end of the last day of the period to which the profit and loss account relates, being a balance-sheet that gives a true and fair view of the state of affairs of the building society as at that date;

and

- (c) a report prepared by the auditor of the building society containing prescribed statements and information relating to the accounts of the building society for the financial year up to that date.

(7) A statement and accompanying documents under subsection (5) and, in a case where a postal ballot is to be conducted in respect of the proposed amalgamation, the ballot papers to be used in the ballot must be sent so that they will in due course of post reach each member who is entitled to vote not later than 14 days before—

- (a) in a case where a postal ballot is to be conducted—the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot;
- (b) in any other case—the day of the meeting of the building society at which approval of the proposed amalgamation which ballot papers are sent to members for the purposes of the postal ballot on by members is sought.

Determination of application for amalgamation

161. (1) If, on due application for an amalgamation under which a new local building society is to be registered under this Act, the Commission is satisfied—

- (a) that the building society is eligible to be registered according to the provisions governing eligibility for registration under Part III;
- (b) in the case of a proposed amalgamation that has been referred to the *Restructuring Review Committee* under Division IV—that the Minister has approved the proposed amalgamation;

- (c) that the amalgamation as it affects any foreign building society party to the application will proceed as proposed according to the law applying to the foreign building society in its place of incorporation;

and

- (d) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (e) register the building society and its rules and issue a certificate of incorporation in the prescribed form together with a certificate of amalgamation in the prescribed form to that building society;

and

- (f) remove from the register the names of the other building societies party to the application.

(2) If, on due application for an amalgamation under which a new foreign building society is to be registered, or a foreign building society is to be newly registered, under this Act, the Commission is satisfied—

- (a) that the building society is eligible to be registered according to the provisions governing eligibility for registration under Part X;
- (b) in a case of a proposed amalgamation that has been referred to the *Restructuring Review Committee* under Division IV—that the Minister has approved the proposed amalgamation;
- (c) that the amalgamation as it affects the building society and any other foreign building society party to the application will proceed as proposed according to the law applying to the foreign building society in its place of incorporation;

and

- (d) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (e) register the building society as a foreign building society and issue a certificate of registration in the prescribed form together with a certificate of amalgamation in the prescribed form to that building society;

and

- (f) remove from the register the names of the other building societies party to the application.

(3) If, on due application for an amalgamation under which a local building society is to continue to be registered under this Act, the Commission is satisfied—

- (a) that there are reasonable grounds for believing that the building society would be able to comply with the requirements of Part V and carry out its objects successfully;
- (b) in a case of a proposed amalgamation that has been referred to the *Restructuring Review Committee* under Division IV—that the Minister has approved the proposed amalgamation;
- (c) that the amalgamation as it affects any foreign building society party to the application will proceed as proposed according to the law applying to the foreign building society in its place of incorporation;

and

- (d) that there is no good reason why it should refuse to grant the application,

the Commission must—

- (e) issue a certificate of amalgamation in the prescribed form to that building society;

and

- (f) remove from the register the names of the other building societies party to the application.

(4) If, on due application for an amalgamation under which a foreign building society is to continue to be registered under this Act, the Commission is satisfied—

- (a) that there are reasonable grounds for believing that the building society would be able to comply with the same requirements as apply under Part V in relation to building societies registered and incorporated under this Act;
- (b) in a case of a proposed amalgamation that has been referred to the *Restructuring Review Committee* under Division IV—that the Minister has approved the proposed amalgamation;
- (c) that the amalgamation as it affects the building society and any other foreign building society party to the application will proceed as proposed according to the law applying to the foreign building society in its place of incorporation;

and

- (d) that there is no good reason why the application should not be granted,

the Commission must—

- (e) issue a certificate of amalgamation in the prescribed form to that building society;

and

- (f) remove from the register the names of the other building societies party to the application.

(5) A local building society is dissolved on removal of its name from the register pursuant to this section.

Transfer of property, etc., on amalgamation

162. (1) Where a certificate of amalgamation is issued under this Division, then, by virtue of this section—

- (a) the property of any local building society that is dissolved as part of the amalgamation vests in the amalgamated building society on the issue of the certificate without any conveyance, transfer or assignment;

and

- (b) the property in this State of any foreign building society dissolved as part of the amalgamation vests in the amalgamated building society on the dissolution of the foreign building society without any conveyance, transfer or assignment.

(2) The Registrar-General must—

- (a) on application by an amalgamated building society;

and

- (b) on the production of the certificate of amalgamation and such duplicate certificates of title and other documents as the Registrar-General may require,

register the vesting of any estate or interests in land in the amalgamated building society pursuant to this section.

(3) Any property vested in an amalgamated building society pursuant to this section remains subject to any debt, liability or obligation affecting the property.

(4) All debts and liabilities of the building societies dissolved as part of the amalgamation are debts and liabilities of the amalgamated building society.

(5) The vesting of property in an amalgamated building society pursuant to this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

Transfer of members

163. The members of a local building society or foreign building society that is dissolved as part of an amalgamation under this Division become, on that amalgamation, members of the amalgamated building society.

Power to exempt

164. (1) The Commission may, by instrument in writing, exempt, conditionally or conditionally, a building society from any provision of this Division.

(2) The Commission may, on non-compliance with a condition of an exemption under this section, by instrument in writing, revoke the exemption.

DIVISION III—CONVERSION OF BUILDING SOCIETY TO COMPANY,
CREDIT UNION OR FRIENDLY SOCIETY

Application by building society for approval of proposal to convert to a company, credit union or friendly society

165. (1) A building society may, unless prohibited from doing so by its rules, lodge with the Commission an application for approval of a proposal that it convert to a company, credit union or friendly society.

(2) The application must be made in the prescribed form and must be accompanied by—

- (a) two copies of the proposed memorandum of association and articles of association (if any) or the rules or laws of the proposed company, credit union or friendly society;
- (b) a copy of the register of members of the building society verified by statutory declaration of a director and made up so as to be complete and correct as at a day not more than six days before the date of the application;
- (c) a statement setting out the date and terms on which the conversion of the building society to a company, credit union or friendly society is proposed to take effect;

and

- (d) such other documents or information as the Commission may require.

(3) Application may not be made under this section unless the proposal to convert to a company, credit union or friendly society and the terms of the memorandum of association and articles of association (if any) or the rules or laws proposed for the company, credit union or friendly society have been approved by not less than the prescribed number of members of the building society voting in a postal ballot conducted in accordance with the regulations.

(4) The building society must before making an application under this section send to each of its members—

- (a) a summary, containing such information as is prescribed, of the proposed memorandum of association and articles of association (if any) or the rules or laws of the proposed company, credit union or friendly society;
- (b) a copy of such reports, valuations and other material prepared by independent experts as may be required and approved by the Commission;

and

- (c) a statement, the contents of which have been approved by the Commission, relating to—
 - (i) the financial position of the building society;

- (ii) the reasons for the proposal to convert to a company, credit union or friendly society;
 - (iii) any interest that its officers may have in the conversion of the building society to a company, credit union or friendly society;
 - (iv) any compensation or other consideration proposed to be paid to its officers arising out of the conversion of the building society to a company, credit union or friendly society;
 - (v) any payments to be made to its members arising out of the conversion of the building society to a company, credit union or friendly society;
- and
- (vi) such other matters as the Commission may direct.

(5) The part of a statement under subsection (4) relating to the financial position of the building society must include—

- (a) the profit and loss account of the building society for the period up until a day not more than six months before the date proposed for the conversion, being an account that gives a true and fair view of the profit or loss of the building society for that period;
 - (b) a balance-sheet as at the end of the last day of the period to which the profit and loss account relates, being a balance-sheet that gives a true and fair view of the state of affairs of the building society as at that date;
- and
- (c) a report prepared by the auditor of the building society containing prescribed statements and information relating to the accounts of the building society for the financial year up to that date.

(6) A statement and accompanying documents under subsection (4) and the ballot papers to be used in the postal ballot must be sent so that they will in due course of post reach each member who is entitled to vote not later than 14 days before the day on or before which the ballot papers must be returned in accordance with the regulations by members voting in the ballot.

Conversion of building society to company, credit union or friendly society

166. (1) Where—

- (a) a proposal by a building society that it convert to a company, credit union or friendly society is approved by the Minister under Division IV;
- (b) the company, credit union or friendly society is formed and incorporated in accordance with any conditions of the Minister's approval;

and

- (c) any other conditions of the approval relating to the transfer of membership, issuing of shares or any other matter are complied with,

then, by virtue of this section, on the day approved by the Minister for the conversion—

- (d) the property of the building society vests in the new body without any conveyance, transfer or assignment subject to any debt, liability or obligation affecting the property;
- (e) the debts and liabilities of the building society become debts and liabilities of the new body;

and

- (f) the building society is dissolved and its personality merges in that of the new body.

(2) The Registrar-General must—

- (a) on application by the new company, credit union or friendly society;

and

- (b) on production of a certificate of the Minister referred to in subsection (3) and such duplicate certificates of title and other documents as the Registrar-General may require,

register the vesting of any estate or interests in land in the company, credit union or friendly society pursuant to this section.

(3) The Minister may, on application by the company, credit union or friendly society and production of such evidence as the Minister may require, issue to the company, credit union or friendly society a certificate in the prescribed form certifying—

- (a) as to the giving of the Minister's approval to the conversion, the conditions of the approval and the day approved for the conversion;

and

- (b) that the Minister is satisfied that the conditions of the approval have been complied with,

and any such certificate constitutes conclusive evidence as to the matters so certified and that the conditions of the approval have been complied with.

(4) The vesting of property in a company, credit union or friendly society pursuant to this section, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

DIVISION IV—REVIEW OF PROPOSALS FOR AMALGAMATION, ETC.

Certain proposals to be referred to *Restructuring Review Committee*

167. (1) Subject to this section, the following matters must be referred by the Commission to the *Restructuring Review Committee*:

- (a) any proposal for amalgamation in respect of which application has been made under Division II;
 - (b) any proposal for conversion of a building society to a company, credit union or friendly society in respect of which application has been made under Division III;
 - (c) any proposal reported by a member of a building society to the Commission that would result in the member or a group of associated members holding shares in the building society the total nominal value of which exceeds—
 - (i) the limit fixed under Part IV;
 - or
 - (ii) a limit approved by the Minister under this Division in relation to that member or group.
- (2) The Commission is not required to refer a proposal for amalgamation to the Committee if—
- (a) the proposal is designed to give effect to a direction of the Commission under Part VIII;
 - or
 - (b) the Commission has determined that the proposal is of such a nature that reference to the Committee is not warranted.

Review of proposals

168. (1) Where a proposal is referred to the Committee under this Division, the Committee must examine the proposal and recommend to the Minister either that the Minister approve the proposal (conditionally or unconditionally) or that the Minister not approve the proposal.

(2) The Minister must, on receiving the recommendation of the Committee in respect of the proposal, have regard to the recommendation and the reasons given by the Committee in support of its recommendation and either approve or not approve the proposal.

(3) The Committee must, in determining whether or not to recommend approval of the proposal, and the Minister must, in determining whether or not to approve the proposal, have regard to—

- (a) the public interest;
- (b) the interests of the members of the building society or building societies to which the proposal relates;

- (c) the information furnished to those members in respect of the proposal and in respect of the interests of directors and others promoting the proposal;
- (d) whether, in the case of a proposal for conversion of a building society to a company, the company would be subject to prudential regulation similar to that applying to the building society;
- (e) proposals for the payment of costs associated with the proposal;

and

- (f) any other relevant matter.

(4) The Minister may give an approval in respect of a proposal—

- (a) in the case of a proposal that would result in a member of a building society or a group of associated members holding shares in the building society the total nominal value of which exceeds—

- (i) the limit fixed under Part IV;

or

- (ii) a limit approved by the Minister under this Division in relation to that member or group,

on the condition that the building society obtains approval of the proposal by not less than the prescribed number of members of the building society voting in a postal ballot conducted in accordance with the regulations;

or

- (b) in the case of any proposal—

- (i) on the condition that the proposal is modified in a specified way or specified action is taken in relation to the proposal;

and

- (ii) on any other condition that the Minister considers appropriate.

(5) A building society is not required to pass a special resolution or conduct a postal ballot in order to comply with a condition requiring modification of the proposal imposed by the Minister under subsection (4)(b).

(6) An approval under this section of a proposal relating to the limit on the total nominal value of shares in a building society that may be held by a member or a group of associated members must specify the total nominal value of such shares to that may be held by that member or group by virtue of the approval.

(7) The Minister may, by notice in writing, vary or revoke a condition of an approval under this section and may, on non-compliance with such a condition, by notice in writing, revoke the approval.

Exemption

169. The Minister may, on the recommendation of the *Restructuring Review Committee*, if of the opinion that it is appropriate to do so, exempt, conditionally or unconditionally, a building society from any provision of this Act or its rules in order to enable it to give effect to a proposal approved by the Minister under this Division.

Regulation of certain advertising

170. (1) A person must not issue, or cause to be issued, any advertisement relating to a restructuring proposal unless the Commission has first approved the advertisement.

(2) If the Commission is of the opinion that any advertisement issued in respect of a restructuring proposal is false or misleading, or is not in the interests of the members of a building society, the Commission may, by notice in writing served on the person who issued the advertisement, or caused it to be issued—

(a) give a direction prohibiting the person from issuing, or causing to be issued, any further advertisements, or any further advertisements of a specified kind, with respect to the proposal;

or

(b) give a direction requiring that person to take all practicable steps to withdraw any advertisement, or any advertisement of a specified kind, with respect to the proposal,

or may do both of those things.

(3) A person must not fail to comply with a direction under this section.

(4) A direction under this section may be varied or revoked at any time by a subsequent direction under this section.

(5) In this section—

"restructuring proposal" means—

(a) a proposal for amalgamation under Division II;

(b) a proposal for the conversion of a building society to a company, credit union or friendly society under Division III;

or

(c) a proposal that would result in a member of a building society or a group of associated members holding shares in the building society the total nominal value of which exceeds—

(i) the limit fixed under Part IV;

or

- (ii) a limit approved by the Minister under this Division in relation to that member or group.

Lobbying of members prohibited

171. (1) A person must not—

- (a) issue, or cause to be issued, any advertisement that is calculated to influence the opinions of members of a building society;

or

- (b) communicate directly (whether orally, in writing, by telephone, by facsimile transmission or otherwise) with any member of a building society for the purpose of influencing the opinion of that member,

with respect to a restructuring proposal.

(2) Subsection (1) does not prevent a person from issuing any advertisement or communicating directly with any member of a building society in accordance with an approval given or requirement made by the Commission, the Committee or the Minister with respect to the proposal.

(3) In this section—

"restructuring proposal" means—

- (a) a proposal for amalgamation under Division II;
- (b) a proposal for the conversion of a building society to a company, credit union or friendly society under Division III;

or

- (c) a proposal that would result in a member of a building society or a group of associated members holding shares in the building society the total nominal value of which exceeds—

- (i) the limit fixed under Part IV;

or

- (ii) a limit approved by the Minister under this Division in relation to that member or group.

Certain things to be taken to have been authorized by resolution

172. (1) Where, in relation to a proposal that has been referred to the Committee under this Division—

- (a) it would, but for this section, be necessary for any particular action to have been approved by resolution or special resolution of a building society;

and

- (b) that action has been approved in a postal ballot conducted by the building society for the purposes of this Part,

that action is to be taken, for the purposes of this Act or the rules of the building society, to have been approved by a resolution or special resolution, as the case may require.

Fees and charges

173. The regulations may make provision for or with respect to fees and charges payable in connection with the review of proposals under this Division.

PART VIII

SPECIAL POWERS OF INTERVENTION OF COMMISSION

Special powers of intervention of Commission

174. (1) The Commission may, if of the opinion that a building society—

(a) is insolvent or is in danger of becoming insolvent;

or

(b) has been conducting its affairs in an improper or financially unsound manner,

by notice in writing to the building society, declare that there is cause for intervention under this section.

(2) Where the Commission has declared that there is cause for intervention under this section in relation to a building society, the Commission may do one or more of the following:

(a) order an audit of the affairs of the building society by an auditor approved by the Commission at the expense of the building society;

(b) require the building society to correct any practices that in the opinion of the Commission are undesirable or unsound;

(c) prohibit or restrict the raising or lending of funds by the building society or the exercise of any other powers of the building society;

(d) appoint an administrator of the building society;

(e) direct the building society to take all necessary action to amalgamate with another building society in accordance with Part VII, or to sell to another building society all or part of its assets and liabilities, subject, in either case, to the agreement of the other building society, or direct that the building society be wound up;

(f) remove a director of the building society from office;

(g) exempt the building society, by notice in writing addressed to the building society, from all, or any of the provisions of Part V for such period as may be specified in the notice;

(h) stipulate principles in accordance with which the affairs of the building society are to be conducted.

(3) Where the Commission has declared that there is cause for intervention under this section in relation to a building society, the Commission may, of its own motion, or on application in writing by the building society, determine that there is no longer such cause and, by notice in writing to the building society, revoke the declaration.

(4) A building society may appeal to the Minister against—

(a) the making of a declaration under this section in relation to the building society;

or

- (b) refusal by the Commission of an application by the building society for revocation of a declaration under this section in relation to the building society,

and the Minister may, on any such appeal, confirm or revoke the declaration.

- (5) A declaration under this section is not stayed by an appeal to the Minister.

Appointment of administrator

175. (1) Where the Commission appoints an administrator to conduct the affairs of a building society, the administrator—

- (a) has all the powers of the board of directors of the building society;
- (b) may order any officer or employee of the building society to leave, and remain away from, the offices of the building society;
- (c) must report regularly to the Commission on the administration;

and

- (d) must report to the Commission evidence of any offence or misconduct discovered in the course of the administration and provide the Commission with such access, information and assistance as it may require for any resulting investigation.

(2) An administrator of a building society is entitled to such remuneration as is approved by the Commission.

(3) The remuneration of the administrator and all other costs and expenses arising out of the administration of the building society are payable out of the funds of the building society.

(4) An administrator of a building society may, by notice in writing, require an officer or employee or former officer or employee of the building society to furnish a written report on such matters relating to the affairs of the building society as the administrator may specify in the notice.

(5) A person required to furnish a report pursuant to subsection (4) may be reimbursed out of the funds of the building society for such costs and expenses as the administrator considers have been reasonably incurred in making the report.

(6) A person who fails to comply with a requirement made under subsection (4) is guilty of an offence.

(7) On the appointment of an administrator of a building society, unless otherwise determined by the Commission, the directors of the building society cease to hold office.

(8) Before terminating the appointment of an administrator of a building society, the Commission must—

(a) ensure that directors of the building society have been elected in accordance with the rules of the building society at a meeting convened by the administrator in accordance with those rules;

or

(b) appoint directors of the building society.

(9) Directors elected or appointed under subsection (8)—

(a) take office on termination by the Commission of the appointment of the administrator;

and

(b) in the case of appointed directors, hold office until the annual general meeting of the building society that next follows termination of the appointment.

(10) The appointment of an administrator of a building society terminates by force of this subsection on the appointment of a liquidator, receiver, receiver and manager or official manager of or for the building society.

(11) An administrator appointed by the Commission must, on the termination of his or her appointment fully account to the Commission for the administration of the building society.

(12) On the Commission notifying the administrator that it is satisfied that the administrator has fully accounted for the administration of the building society, the administrator is released from all claims by—

(a) the building society or a member;

or

(b) a person claiming under the building society or a member,

other than claims arising out of fraud, dishonesty, negligence or wilful failure to comply with the provisions of this Act.

(13) No liability attaches to the Commission or the Crown for any act or omission by the administrator in the exercise or purported exercise of his or her powers or functions as administrator.

PART IX

RECEIVERS, MANAGERS, OFFICIAL MANAGEMENT AND WINDING UP

Receivers, managers and official management

176. Parts X and XI of the *Companies (South Australia) Code* apply, with necessary adaptations and prescribed modifications, additions or exclusions, to and in relation to a building society.

Winding up

177. (1) A building society may be wound up—

- (a) voluntarily;
 - (b) by the Court;
 - (c) pursuant to a direction of the Commission under Part VIII;
- or
- (d) on a certificate of the Commission under this section.

(2) Part XII of the *Companies (South Australia) Code* applies, with prescribed modifications, additions or exclusions, to and in relation to a building society as if it were a company limited by shares.

(3) In the case of a winding up on a certificate of the Commission, the building society may be wound up if the Commission certifies—

- (a) that the number of members of the building society has fallen below 25;
- (b) that the building society has not commenced business within a year of registration or has suspended business for a period of more than six months;
- (c) that the registration of the building society has been obtained by mistake or fraud;
- (d) that the building society has ceased to have a paid-up share capital of at least \$10 000 000;
- (e) that the building society has, after notice by the Commission of any breach of or non-compliance with this Act or the rules of the building society, failed, within the time referred to in the notice, to remedy the breach;
- (f) that there are, and have been for a period of one month immediately before the date of the Commission's certificate, insufficient directors of the building society to constitute a quorum as provided by the rules of the building society;

or

- (g) that an inquiry pursuant to this Act into the affairs of a building society or the working and financial condition of a building society discloses that in the interests of members or creditors of the building society, the building society should be wound up.

(4) The Commission may not issue a certificate under subsection (3)(c), (e), (f) or (g) unless the Minister consents to the issue of the certificate.

(5) Where the Commission issues a certificate under this section, it may appoint a person to be the liquidator of the building society, and the liquidator must give such security as may be prescribed and is entitled to receive fees fixed by the Commission on the advice of the Auditor-General.

(6) The Commission must, within 10 days after appointing a liquidator of a building society, give notice of that appointment by notice published in the *Gazette* and advertised on two separate days in a newspaper circulating generally in the State and, where the building society is carrying on business as a building society in another State or Territory of the Commonwealth, on two separate days in a newspaper circulating generally in that State or Territory.

(7) A winding up on the certificate of the Commission—

(a) commences on the day that the certificate is issued;

and

(b) must be carried out in the prescribed manner.

Vacancy in office of liquidator

178. Where a building society is being wound up voluntarily and a vacancy occurs in the office of liquidator that, in the opinion of the Commission, is unlikely to be filled in the manner provided by the *Companies (South Australia) Code*, the Commission may appoint a person to be liquidator.

Remuneration of liquidator

179. The remuneration paid to the liquidator of a building society wound up voluntarily must not exceed the amount fixed by the Commission.

Cancellation

180. As soon as practicable after a building society is wound up, the Commission must cancel the registration of the building society, and the building society is then dissolved.

PART X

FOREIGN BUILDING SOCIETIES

Registration

181. (1) A body corporate that is lawfully carrying on business as a building society in another State or Territory of the Commonwealth and that proposes to carry on business as a building society in this State may apply to the Commission in the prescribed manner to be registered as a foreign building society.

(2) An application for registration as a foreign building society must be accompanied by—

- (a) a copy of the certificate of incorporation or registration issued in respect of the building society by the appropriate authority in the State or Territory of the building society's origin, certified by that authority;
- (b) a copy of the rules or constitution of the building society and a copy of the last audited balance-sheet of the building society, in each case certified by at least two of the directors of the building society;

and

(c) the following, verified in the prescribed manner:

(i) a statement setting out—

- (A) the full name, address and occupation of each director of the building society;
- (B) the full name and address of each person who will act as an agent of the building society in this State;

and

(C) the address of the proposed registered office of the building society in this State;

(ii) a copy of an instrument appointing a person resident in this State (not being a body corporate incorporated outside this State) as a person on whom all notices or legal process may be served on behalf of the building society;

and

(iii) such other documents or information as the Commission may require.

(3) If, on due application for registration under this section, the Commission is satisfied that the building society is eligible for registration, the Commission must register the building society as a foreign building society and issue a certificate of registration in the prescribed form.

(4) A building society is eligible for registration under this section if—

- (a) the name under which the building society proposes to carry on business in this State—
 - (i) is not such as to be misleading as to the nature, objects or purposes of the building society;
 - (ii) is not such as is likely to be confused with the name of any other body corporate or any registered business name;
 - (iii) is not undesirable as a name for a building society;and
 - (iv) conforms with any direction of the Minister relating to names of building societies;
 - (b) the building society meets the prescribed requirements;
- and
- (c) there is no good reason why the building society should not be registered under this section.

(5) Section 512 of the *Companies (South Australia) Code* does not apply in relation to a building society registered as a foreign building society under this section.

Registered office

182. A foreign building society must have a registered office in this State.

Name

183. (1) A foreign building society must not use any name other than—

- (a) the name registered by the Commission for use by the building society in this State;
- or
- (b) subject to the conditions of the approval, a name approved under this section.

(2) The Commission must, on the application of a foreign building society, register another name for use by the building society in this State in place of the name for the time being registered in respect of the building society if the Commission is satisfied that the new name—

- (a) is not such as to be misleading as to the nature, objects or purposes of the building society;
- (b) is not such as is likely to be confused with the name of any other body corporate or any registered business name;
- (c) is not undesirable as a name for a building society;

and

(d) conforms with any directions of the Minister relating to the names of building societies.

(3) The Commission may, on the application of a foreign building society, approve the use by the building society of a name other than its registered name subject to such conditions limiting the area and circumstances in which the other name may be used as the Commission may determine.

(4) The Commission may, by notice in writing to a foreign building society, withdraw an approval given to the building society under subsection (3).

(5) A foreign building society must ensure that—

(a) its registered name or a name approved under this section is conspicuously exhibited outside its registered office and each other place of business established by it in this State;

and

(b) its registered name or a name approved under this section and the place of origin of the building society appear in legible characters on all business letters, notices, advertisements and other official publications of the building society.

(6) Section 517 of the *Companies (South Australia) Code* does not apply in relation to a foreign building society.

Commission to be notified of certain changes

184. Within one month of any alteration or change affecting—

(a) the rules or constitution of a foreign building society;

(b) the directors of a foreign building society;

(c) the agents (or their addresses) of a foreign building society;

(d) the person appointed as the person on whom notices and legal process may be served on behalf of the foreign building society;

(e) the address of the registered office in this State of a foreign building society;

(f) the address of the registered office of a foreign building society in its place of origin;

or

(g) the name under which a foreign building society carries on business in the place of its origin,

the foreign building society must lodge with the Commission particulars of the change or alteration accompanied by such documents as may be prescribed.

Balance-sheets

185. (1) A foreign building society must, within six months (or such longer period as the Commission may allow) of the end of each of its financial years, lodge with the Commission a copy of the balance-sheet relating to the financial affairs of the foreign building society as at the end of that financial year, in the form and with any accompanying documents required by the law of the foreign building society's place of origin.

(2) If the Commission is of the opinion that a balance-sheet lodged with the Commission pursuant to this section does not sufficiently disclose the financial affairs of the foreign building society, the Commission may, by notice in writing, require the foreign building society to furnish the Commission with further information or documents, but not so as to require the production of anything that could not be required of a building society under the other provisions of this Act.

(3) A foreign building society must comply with a notice given to it under subsection (2) within the period specified in the notice.

Cessation of business

186. (1) A foreign building society must, within seven days of ceasing to carry on business as a building society in this State, notify the Commission in writing of that fact.

(2) On notifying the Commission that it has ceased to carry on business as a building society in this State, a foreign building society is no longer obliged to comply with this Part.

(3) The Commission must, 12 months after receiving a notification under subsection (1), remove the name of the foreign building society from the register of foreign building societies, unless the Commission has been notified in writing that the foreign building society has resumed carrying on business as a building society in this State.

Failure by foreign building society to comply with prescribed requirements

187. (1) If a foreign building society fails to comply with any requirements prescribed for the purposes of this section, the Commission may—

- (a) by notice in writing served on the foreign building society—
 - (i) give a direction prohibiting the foreign building society from issuing advertisements of all kinds or of kinds specified in the direction;
 - (ii) give a direction prohibiting the foreign building society from issuing any further shares, accepting any further deposits or loan funds or making any further loans;
- (b) by notice published in the *Gazette*, cancel the registration of the foreign building society.

(2) A direction under this section may be varied or revoked at any time by notice in writing served on the foreign building society.

170.

(3) A foreign building society may appeal to the Minister against a direction or other action of the Commission under this section and, on any such appeal, the Minister may confirm, vary or set aside the direction or action.

(4) A foreign building society must comply with any direction given to it under this section.

PART XI

ASSOCIATIONS

Associations must be registered under this Part

188. Subject to the regulations, no building society may be a member of a body whose objects include any of the objects of an association under this Act unless that body is registered as an association under this Act.

Formation

189. (1) An association of building societies may be formed by three or more building societies, in accordance with the provisions of this Part.

(2) The objects of an association are such of the following as are authorized by the rules of the association:

- (a) to promote the interests of and strengthen co-operation among building societies and associations;
- (b) to render services to and act on behalf of its members in such ways as may be specified in, or authorized by, the rules of the association;
- (c) to advocate and promote such practices and reforms as may be conducive to any of the objects of the association;
- (d) to co-operate with other bodies with similar objects;
- (e) to promote the formation of building societies;

and

- (f) to perform such other functions and do such other things as may be incidental or conducive to the attainment of all or any of the foregoing objects.

Registration and incorporation

190. (1) An application for the registration of an association—

- (a) must be made in the prescribed form and must be under the common seals of all the building societies that are to be members of the association on its formation;

and

- (b) must be accompanied by the rules of the proposed association.

(2) If the Commission is satisfied—

- (a) that the rules as submitted are not contrary to the provisions of this Act;
- (b) that there are reasonable grounds for believing that the association if registered would be able to carry out its objects successfully;

and

- (c) that there is no good reason why the association and its rules should not be registered,

the Commission must register the association and its rules and issue a certificate of incorporation in the prescribed form.

- (3) On the issue of a certificate of incorporation, the association is a body corporate and—

- (a) has, subject to this Act and the rules of the association, the legal capacity of a natural person;

- (b) may sue and be sued in its corporate name;

and

- (c) has the powers, duties or functions conferred or imposed by this Act and the rules of the association.

Meetings

191. (1) Meetings of the members of an association must be convened and conducted in accordance with the rules of the association.

- (2) A member of an association is, at any such meeting, entitled—

- (a) to be represented in such manner;

and

- (b) to exercise such voting rights,

as may be prescribed by the rules of the association.

(3) An association must cause full and accurate minutes to be kept of every meeting of the board, and of every meeting of the members, of the association.

Application of this Act to associations

192. The following provisions of this Act apply with necessary adaptations and prescribed modifications, additions or exclusions to and in relation to associations:

- (a) Divisions V and VII of Part III;
- (b) Division VI of Part IV and schedule 2;
- (c) Divisions I, III, IV, V, VI and VII of Part VI;
- (d) Division II of Part VII;
- (e) Part VIII;
- (f) Part IX;

(g) Part XII;

and

(h) Part XIII.

PART XII

APPEALS

Appeals from decisions of Commission

193. (1) Subject to this section, a person aggrieved by—

- (a) the refusal of the Commission to register a building society or foreign building society;
 - (b) the refusal of the Commission to register or receive rules or any other document;
- or
- (c) any other act, omission or decision of the Commission under this Act,

may, within such period (if any) as is prescribed, appeal to the Court against such act, omission or decision.

(2) The Court may, on an appeal under this section, confirm, reverse or modify the act or decision, or remedy the omission, appealed against and make such orders and give such directions in the matter as it thinks fit.

(3) Subject to subsection (4), this section does not apply to—

- (a) any act, omission or decision of the Commission in respect of which any provision in the nature of an appeal or review is expressly provided by this Act;
- or
- (b) any act or decision of the Commission that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of any act, matter or thing.

(4) Where—

- (a) provision is made by this Act for an appeal to the Minister against, or a review by the Minister of, an act, omission or decision of the Commission;
- and
- (b) such an act, omission or decision of the Commission is, in a particular case, done or made in accordance with a direction of the Minister,

that act, omission or decision and any decision of the Minister on such an appeal or review may be the subject of an appeal to the Court under this section.

Appeals from decisions of receivers, liquidators, etc.

194. (1) A person aggrieved by any act, omission or decision of—

- (a) a receiver, or a receiver and manager, of property of a building society;

175.

(b) an official manager or a deputy official manager of a building society;

or

(c) a liquidator or provisional liquidator of a building society or an association,

may, within such period (if any) as is prescribed, appeal to the Court against the act, omission or decision.

(2) The Court may, on an appeal under this section, confirm, reverse or modify the act or decision, or remedy the omission, appealed against and make such orders and give such directions in the matter as it thinks fit.

PART XIII

MISCELLANEOUS

Special meeting and inquiry

195. (1) The Commission must, on the application of a majority of the members of the board of the building society or of not less than one-tenth of the members of the building society, or may, of its own motion—

(a) call a special meeting of a building society;

or

(b) hold an inquiry into the affairs (including the working and financial conditions) of a building society.

(2) An application under subsection (1) must be supported by such evidence as the Commission directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made without malicious motive.

(3) Notice of the application must be given to the building society as the Commission directs.

(4) The applicants must give such security for the expenses of the meeting or inquiry as the Commission directs.

(5) The Commission may—

(a) direct at what time and place the meeting or inquiry is to be held;

(b) direct what matters are to be discussed or determined;

and

(c) notwithstanding the rules of the building society, give such notice to members of the holding of the meeting or inquiry as it considers appropriate.

(6) The Commission may direct the directors and such other persons as it requires to attend the meeting or inquiry.

(7) A person to whom a direction is given under subsection (6) must comply with the direction.

(8) A meeting held under this section has all the powers of a meeting called in accordance with the rules of a building society and has power to appoint a person to preside at the meeting, notwithstanding any rule of the building society to the contrary.

(9) The Commission or any person nominated by it may attend and address a meeting held under this section.

(10) All expenses of and incidental to the meeting or inquiry may be defrayed by the applicants or out of the funds of the building society or by any officer or member, or former officer or member, in such proportions as may be agreed between the Commission and those persons, and may be recovered as a debt in a court of competent jurisdiction.

(11) In default of agreement under subsection (10), the expenses must be defrayed by such persons, and in such proportions, as the Court, on the application of the Commission, directs.

Power to require information relating to associates of members of building societies

196. (1) The Commission or the building society may, by notice in writing, require a person who is a member of a building society to furnish to the Commission or the building society, as the case may be, a statement in writing setting out, so far as it lies within his or her knowledge, full particulars of—

(a) the name and address of every person who is an associate of his or hers;

and

(b) the relationship or circumstances by virtue of which the person is an associate of his or hers.

(2) A notice under subsection (1) may be served on the member personally or by post addressed to the member's address of which the building society last received notice from the member.

(3) A person served with a notice under subsection (1) must comply with the notice within two business days after service of the notice or such longer period as may be allowed in the notice.

(4) A person is not guilty of an offence against subsection (3) in respect of a failure to furnish information required by notice by a building society if it is proved that the giving of the notice was for any reason frivolous or vexatious.

(5) A building society must keep a register in which it records such information obtained by it pursuant to this section as is prescribed.

Restrictions on initial advertisements

197. (1) A person must not issue, or cause to be issued, any advertisement that relates to a building society or foreign building society proposed to be formed or registered under this Act, unless the Commission has first consented to the advertisement.

(2) A person whose name appears as a proposed officer of a building society or foreign building society in an advertisement issued in contravention of subsection (1) is guilty of an offence under that subsection, unless it is proved that the person did not know of the advertisement or exercised all due diligence to prevent the issue of the advertisement.

(3) A building society or foreign building society must submit the first advertisement proposed to be issued by the building society or foreign building society after registration to the Commission for its approval.

Power to control advertising of a building society or foreign building society

198. (1) The Commission may, by notice in writing served on a building society or foreign building society, give a direction—

- (a) prohibiting the issue by the building society or foreign building society of advertisements of all kinds;
- (b) prohibiting the issue by the building society or foreign building society of advertisements of any kind specified in the direction;
- (c) prohibiting the issue by the building society or foreign building society of any advertisements that are or are substantially in the same form as an advertisement that has been previously issued;
- (d) requiring the building society or foreign building society to take all practicable steps to withdraw any advertisement specified in the direction;

or

- (e) requiring that in advertisements of any specified kind or invitations to invest in or lend money to the building society or foreign building society, there is included a statement giving any information stipulated by the Commission with respect to the building society or foreign building society.

(2) Directions under this section may be varied or revoked at any time by notice in writing served on the building society or foreign building society.

(3) A building society or foreign building society may appeal to the Minister against a direction of the Commission under this section and, on any such appeal, the Minister may confirm, vary or set aside the direction.

(4) A building society or foreign building society must comply with any direction given to it under this section.

Carrying on business with insufficient members or share capital

199. A building society that has continued for one month or more to carry on business—

- (a) after the number of its members has fallen below 25;

or

- (b) after it has ceased to have a paid-up share capital of at least \$10 000 000,

is guilty of an offence.

Certain management contracts prohibited

200. (1) A building society must not enter into a management contract without the prior written approval of the Commission.

(2) The Commission may give an approval for the purposes of this section subject to such conditions as it thinks fit.

(3) In this section—

"management contract" means an agreement or arrangement under which—

- (a) a building society agrees to perform the whole or a substantial part of its functions—
 - (i) in a particular manner;
 - (ii) in accordance with the directions of any person;
 or
 - (iii) subject to specified restrictions or conditions;
- or
- (b) a person who is not an officer or an employee of the building society agrees to perform the whole, or a substantial part, of the functions of the building society.

Power of Commission to reject documents, etc.

201. (1) If the Commission is of opinion that a document submitted to the Commission—

- (a) contains matter contrary to law;
 - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
 - (c) by reason of an omission or misdescription has not been duly completed;
 - (d) does not comply with the requirements of this Act;
- or
- (e) contains an error, alteration or erasure,

the Commission may refuse to register or may reject the document and may request—

- (f) that the document be appropriately amended or completed and resubmitted;
 - (g) that a fresh document be submitted in its place;
- or
- (h) where the document has not been duly completed, that a supplementary document in the prescribed form be submitted.

(2) The Commission may require a person who submits a document to the Commission to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it should refuse to register or should reject the document.

Form and evidentiary value of books

202. (1) A book that is required by this Act to be kept or prepared may be kept or prepared—

- (a) by making entries in a bound or looseleaf book;
- (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device;

or

- (c) in any other manner approved by the Commission.

(2) Subsection (1) does not authorize a book to be kept or prepared by a mechanical, electronic or other device unless—

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form;

or

- (b) a reproduction of those matters is kept in a written form approved by the Commission.

(3) A building society must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the building society.

(4) Where a building society records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or part of a book containing those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(5) Where—

- (a) by virtue of a provision of this Act a book that is required by this Act to be kept or prepared is *prima facie* evidence of any matters;

and

- (b) the book is kept or prepared by recording or storing the matters concerned by means of a mechanical, electronic or other device,

any writing that reproduces matters so recorded or stored is *prima facie* evidence of those matters.

(6) A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, to be taken to be a reproduction of those matters.

False or misleading statements

203. (1) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission—

(a) makes, or authorizes or permits the making of, a statement that to his or her knowledge is false or misleading in a material particular;

or

(b) omits, or authorizes or permits the omission of, any matter or thing without which the document is to his or her knowledge misleading in a material respect,

is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A person who makes, or authorizes or permits the making of, a statement that is based on information that to his or her knowledge—

(a) is false or misleading in a material particular;

or

(b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is, for the purposes of subsection (1), to be regarded as having made, or authorized or permitted the making of, a statement that to his or her knowledge was false or misleading in a material particular.

(3) A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission—

(a) makes, or authorizes or permits the making of, a statement that is false or misleading in a material particular;

or

(b) omits, or authorizes or permits the omission of, any matter or thing without which the document is misleading in a material respect,

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(4) A person who makes, or authorizes or permits the making of, a statement without having taken reasonable steps to ensure that the information on which the statement was based—

(a) was not false or misleading in a material particular;

and

(b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect,

is, for the purposes of subsection (3), to be regarded as having made, or authorized or permitted the making of, a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

(5) For the purposes of subsections (1) and (3), where—

(a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged with or submitted to the Commission;

and

(b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect,

the person is to be regarded as having authorized the making of the statement or the omission of the matter or thing.

False information, etc.

204. (1) An officer of a building society or foreign building society who makes available or furnishes information, or authorizes or permits the making available or furnishing of information, to—

(a) a director, auditor or member, of the building society or foreign building society;

or

(b) in the case of a subsidiary of a building society—an auditor of the holding building society,

being information, whether in documentary or any other form, that relates to the affairs of the building society or foreign building society and that, to the knowledge of the officer—

(c) is false or misleading in a material particular;

or

- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(2) An officer of a building society or foreign building society who makes available or furnishes information, or authorizes or permits the making available or furnishing of information, to—

- (a) a director, auditor or member of the building society or foreign building society;

or

- (b) in the case of a subsidiary of a building society—an auditor of the holding building society,

being information, whether in documentary or any other form, relating to the affairs of the building society or foreign building society and that—

- (c) is false or misleading in a material particular;

or

- (d) has omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

without having taken reasonable steps to ensure that the information—

- (e) was not false or misleading in a material particular;

and

- (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect,

is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(3) The references in subsections (1) and (2) to a person making available or furnishing, or authorizing or permitting the making available or furnishing of, information relating to the affairs of a building society or foreign building society include references to a person making available or furnishing, or authorizing or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the building society or foreign building society.

(4) Where information is made available or furnished to a person referred to in subsections (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.

Power of court to prohibit payment or transfer of money, securities or other property

205. (1) Where—

- (a) an investigation is being carried out for the purposes of this Act in relation to an act or omission by a person that constitutes or may constitute—
 - (i) an offence against this Act;
 - or
 - (ii) an offence relating to a building society or foreign building society that involves fraud or dishonesty or concerns the management of affairs of a building society or foreign building society;
- (b) a prosecution has been instituted against a person for an offence of a kind referred to in paragraph (a);
- or
- (c) civil proceedings have been instituted against a person whether under this Act or otherwise in relation to an act or omission done or made in the course of or in connection with the affairs of a building society or foreign building society,

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of any persons to whom the person referred to in paragraph (a), (b) or (c), as the case may be (in this section referred to as the "relevant person"), is liable or may be or become liable to pay any money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for any securities or other property, the Court may, on application by the Commission, make one or more of the following orders:

- (d) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to any person associated with the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting, either absolutely or subject to conditions, a person holding money, or securities or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities or other property, to, or to another person at the direction or request of, the person on whose behalf the money, or the securities or other property, is or are held;
- (f) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person out of the State of money of the relevant person or of any person associated with the relevant person;

- (g) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of securities or other property of the relevant person or of any person associated with the relevant person from a place in the State to a place outside the State (including the transfer of securities from a register in the State to a register outside the State);
- (h) an order appointing—
 - (i) where the relevant person is a natural person—receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person;
 - or
 - (ii) where the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;
- (i) where the relevant person is a natural person—an order prohibiting that person from leaving the State without the consent of the Court.

(2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(3) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court may not require the Commission or any other person, as a condition of granting an interim order under subsection (2), to give undertakings as to damages.

(4) Where the Court has made an order under this section, the Court may, on application by the Commission or by any person affected by the order, make a further order rescinding or varying the first mentioned order.

(5) An order made under subsection (1) or (4) may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under subsection (1) or (4).

Injunctions

206. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of—

- (a) the Commission;
- or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of—

(a) the Commission;

or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised—

(a) if the Court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first mentioned person refuses or fails to do that act or thing.

(7) Where the Commission makes an application to the Court for the granting of an injunction under this section, the Court may not require the Commission or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

Examination of persons concerned with building societies or foreign building societies

207. (1) In this section, a reference, in relation to a building society or foreign building society, to a prescribed person is to be construed as a reference to an official manager, liquidator or provisional liquidator of the building society or foreign building society or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that building society or foreign building society.

(2) Where it appears to the Commission or to a prescribed person that—

(a) a person who has taken part or been concerned in the formation, management, administration or winding up of, or has otherwise taken part or been concerned in the affairs of, a building society or foreign building society has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that building society or foreign building society;

or

(b) a person may be capable of giving information in relation to the formation, management, administration or winding up of, or otherwise in relation to affairs of, a building society or foreign building society,

the Commission or prescribed person may apply to the Court for an order under this section in relation to the person.

(3) Where an application is made under subsection (2) in relation to a person, the Court may, if it thinks fit, order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath or affirmation on any matters relating to the formation, management, administration or winding up of, or otherwise relating to affairs of, the building society or foreign building society concerned.

(4) An examination under this section must be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

(5) The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present), as it thinks fit.

(6) A person who is ordered under subsection (3) to attend before the Court must not, without reasonable excuse—

(a) fail to attend as required by the order;

or

(b) fail to attend from day to day until the conclusion of the examination.

Penalty: Division 5 fine or division 5 imprisonment.

(7) A person attending before the Court for examination pursuant to an order made under subsection (3) must not refuse or fail to take an oath or make an affirmation.

Penalty: Division 5 fine or division 5 imprisonment.

(8) A person attending before the Court for examination pursuant to an order made under subsection (3) must not refuse or fail to answer a question that he or she is directed by the Court to answer.

Penalty: Division 5 fine or division 5 imprisonment.

(9) A person attending before the Court for examination pursuant to an order made under subsection (3), if directed by the Court to produce any books in his or her possession or under his or her control relevant to the matters on which he or she is to be, or is being, examined, must not refuse or fail to comply with the direction.

Penalty: Division 5 fine or division 5 imprisonment.

(10) Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

(11) A person attending before the Court for examination pursuant to an order made under subsection (3) must not make a statement that is false or misleading in a material particular.

Penalty: Division 5 fine or division 5 imprisonment.

(12) A person is not excused from answering a question put to him or her at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him or her but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, the answer is not admissible in evidence against him or her in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

(13) The Court may order the questions put to a person and the answers given by him or her at an examination under this section to be recorded in writing and may require him or her to sign that written record.

(14) Subject to subsection (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules of the Court, may be used in evidence in any legal proceedings against the person.

(15) An examination under this section may, if the Court so directs and subject to the rules of the Court, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

(16) A person ordered to attend before the Court or another court for examination under this section may, at his or her own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to him or her such questions as the Court, or the other court, as the case may be, considers just for the purpose of enabling him or her to explain or qualify any answers or evidence that he or she has given.

(17) The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

(18) Where the Court that made the order under subsection (3) for an examination is satisfied that the order for the examination was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

Orders against persons concerned with building societies or foreign building societies

208. (1) In this section, a reference to a prescribed person, in relation to a building society or foreign building society, is to be construed as a reference to an official manager, liquidator or provisional liquidator of the building society or foreign building society or to any other person authorized by the Commission to make applications under this section or to make an application under this section in relation to that building society or foreign building society.

(2) Subject to subsection (3), where, on application by the Commission or a prescribed person, the Court is satisfied that—

(a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a building society or foreign building society;

and

(b) the building society or foreign building society has suffered, or is likely to suffer, loss or damage as a result of the fraud, negligence, default, breach of trust or breach of duty,

the Court may make such order or orders as it thinks appropriate against or in relation to the person (including either or both of the orders specified in subsection (4)) and may so make an order against or in relation to a person notwithstanding that the person may have committed an offence in respect of the matter to which the order relates.

(3) The Court may not make an order against a person under subsection (2) unless the Court has given the person the opportunity—

(a) to give evidence personally;

(b) to call witnesses to give evidence;

(c) to adduce other evidence in relation to the matters to which the application relates;

and

- (d) to employ, at his or her own expense, a solicitor, or a solicitor and counsel, to put to him or her, or to any other witness, such questions as the Court considers just for the purpose of enabling him or her to explain or qualify any answers or evidence that he or she has given.

(4) The orders that may be made under subsection (2) against a person include—

- (a) an order directing the person to pay money or transfer property to the building society or foreign building society;

and

- (b) an order directing the person to pay to the building society or foreign building society the amount of the loss or damage.

(5) Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

Civil proceedings not to be stayed

209. No civil proceedings under this Act may be stayed by reason only that the proceeding discloses, or arises out of, the commission of an offence.

Power to grant relief

210. (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity by virtue of which he or she is such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but has acted honestly and, having regard to all the circumstances of the case, including those connected with his or her appointment, ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from the liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against him or her in respect of any negligence, default, breach of trust or breach of duty in a capacity by virtue of which he or she is such a person, he or she may apply to the Court for relief, and the Court has the same power to grant relief as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) This section applies to a person who is—

- (a) an officer of a building society or foreign building society;
- (b) an auditor of a building society or foreign building society, whether or not he or she is an officer of the building society or foreign building society;
- (c) an expert in relation to a matter in relation to which the civil proceeding has been taken or the claim will or might arise;

or

(d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty in relation to a building society or foreign building society.

(4) In this section—

"officer", in relation to a building society or foreign building society, has the meaning assigned to that term by section 3 and includes—

(a) an employee of the building society or foreign building society;

(b) a receiver, or receiver and manager, of property of the building society or foreign building society;

(c) an official manager or deputy official manager of the building society or foreign building society;

(d) a liquidator of the building society or foreign building society;

and

(e) a trustee or other person administering a compromise or arrangement made between the building society or foreign building society and another person or other persons.

Building societies may act as agents of Aboriginal Loans Commission

211. (1) A building society may, by agreement with the Aboriginal Loans Commission, act as an agent of that Commission.

(2) The terms and conditions of an agreement under subsection (1) must be approved by the Commission.

(3) In this section—

"the Aboriginal Loans Commission" means the Aboriginal Loans Commission established under the *Aboriginal Loans Commission Act 1974* of the Commonwealth.

Powers in relation to money of members who have died or become of unsound mind

212. (1) Where a member of a building society dies, the building society may, at its discretion and without production of probate of the will, or letters of administration of the estate, of the deceased, apply any money held by the building society that was deposited or paid up on a withdrawable share by the deceased in one or both of the following ways:

(a) in payment of the funeral expenses and just debts of the deceased;

(b) in payment to the executor of the will of the deceased or to any person or persons who are, in the opinion of the building society, entitled to the money,

but the total amount applied under this subsection in relation to any one deceased person must not exceed the prescribed maximum.

(2) Where a member of a building society becomes of unsound mind and it appears to the building society that money held by the building society that was deposited or paid up on a withdrawable share by the member is reasonably required for the maintenance of the member, or the maintenance, education or advancement of a member of his or her family, the building society may apply the money for those purposes, but the total amount applied under this subsection in relation to any one member must not exceed the prescribed maximum.

(3) No action lies against a building society in respect of any act, or failure to act, under this section.

Limitation of doctrine of *ultra vires*

213. (1) A transaction to which a building society or a foreign building society is a party is not invalid as against another party to the transaction by reason of any deficiency in the capacity of the building society or foreign building society to enter into, or carry out, the transaction unless that other party to the transaction has actual notice of the deficiency.

(2) A building society or foreign building society is empowered to carry out a transaction that would, but for subsection (1), be invalid.

(3) This section does not prejudice an action by a member of a building society or foreign building society to restrain the building society or foreign building society from entering into or carrying out a transaction that lies beyond the powers conferred on the building society or foreign building society by this Act, any other Act or law or its rules.

Abolition of doctrine of constructive notice

214. A person dealing with a building society or foreign building society, or with an agent of a building society or foreign building society, is not to be presumed to have notice of the rules of the building society or foreign building society, or of any other document registered by or lodged with the Commission in relation to the building society or foreign building society.

Evidentiary provision

215. (1) In any legal proceedings, a document that appears to be a certificate of registration, certificate of incorporation or other certificate issued by the Commission pursuant to this Act, or a certified copy of such a certificate, is, in the absence of proof to the contrary, to be accepted as proof of the matters stated in the certificate or certified copy.

(2) In any legal proceedings, a document—

(a) that appears to be—

(i) a copy of the rules of a building society or foreign building society;

or

(ii) a copy of, or extract from, any of the books or other records of a building society or foreign building society;

and

- (b) is apparently endorsed with a certificate of its authenticity by the Commission or the secretary of the building society or foreign building society,

is, in the absence of proof to the contrary, to be accepted as such a copy or extract.

(3) In any legal proceedings, a document apparently bearing the common seal of a building society or foreign building society is, in the absence of proof to the contrary, to be presumed to have been duly executed by the building society or foreign building society.

General offences and penalties

216. (1) If a person contravenes or fails to comply with—

- (a) a provision of this Act for which no penalty is specifically provided;

or

- (b) in the case of a building society or foreign building society, a rule of the building society or foreign building society,

the person is guilty of an offence.

Penalty: Division 6 fine.

(2) If a building society, foreign building society or other person refuses or neglects to furnish any return, information or document lawfully required by the Commission, the *Restructuring Review Committee* or any other person under this Act, the building society, foreign building society or other person is guilty of an offence.

Penalty: Division 6 fine.

(3) If a person is guilty of an offence against a provision of this Act other than this section and no penalty is specifically provided for that offence, the person is liable to a penalty not exceeding a division 6 fine.

(4) Where a person is convicted of an offence against this Act and after that conviction the act or omission of the person that constituted the offence continues, the person is guilty of a further offence and liable to an additional penalty for each day on which the act or omission continues of an amount not exceeding one-tenth of the maximum penalty for the offence of which the person was convicted.

(5) For the purposes of subsection (3), an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Default extended to officers

217. Where a building society or foreign building society is guilty of an offence against this Act, each officer of the building society or foreign building society is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

General defence

218. In proceedings for an offence against this Act, it is a defence if the defendant proves that in the circumstances of the case there was no failure on the defendant's part to take reasonable care to avoid commission of the offence.

Proceedings for offences

219. (1) An offence against this Act that is not punishable by imprisonment is a summary offence.

(2) An offence against this Act that is punishable by imprisonment is, subject to subsection (3), an indictable offence.

(3) Where—

(a) proceedings for an offence against this Act that is punishable by imprisonment are brought in a court of summary jurisdiction;

and

(b) the prosecutor requests the court to hear and determine the proceedings,

the offence is to be taken to be a summary offence and must be heard and determined as such.

(4) A court of summary jurisdiction may not—

(a) impose, in respect of any one offence against this Act, a period of imprisonment exceeding two years;

or

(b) impose, in respect of offences against this Act, cumulative periods of imprisonment that, in aggregate, exceed five years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) A prosecution for an offence against this Act—

(a) may be commenced—

(i) by the Commission;

(ii) by an officer or employee of the Commission;

or

(iii) with the consent of the Minister, by any other person;

and

- (b) must be commenced within three years after the date on which the offence is alleged to have been committed or such further period as the Minister may, in a particular case, allow.

(7) A document apparently signed by the Minister and stating—

- (a) that the Minister consents to a particular prosecution;
- or
- (b) that the Minister allows a specified extension of the period for commencing a particular prosecution,

is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.

(8) In any proceedings for an offence against this Act, an allegation in the complaint that the complainant is an officer or employee of the Commission is, in the absence of proof to the contrary, to be accepted as proved.

Regulations

220. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe any form for the purposes of this Act;
- (b) prescribe the information to be kept in any register that the Commission is required to keep under this Act;
- (c) prescribe the manner in which a rate of interest is to be calculated for the purposes of this Act;
- (d) prescribe, and provide for the recovery of, fees in respect of an application under this Act;
- (e) limit the charges that may be made by a building society in respect of the granting of a loan by the building society, or for any work done by a building society in relation to the granting of a loan;
- (f) require building societies, or building societies of a prescribed class, to keep their offices open to the public throughout prescribed periods;
- (g) make any provision in relation to the administration of a building society by an administrator appointed under this Act, or the winding up of a building society;
- (h) make any provision in relation to or regulate the financial activities or monetary policies of, or the holding of securities in, building societies or their subsidiaries, foreign building societies or associations;
- (i) limit the amount that a building society may subscribe to an association;

(j) provide for the imposition and recovery of fees for the late lodgment of returns or reports required under this Act;

and

(k) prescribe penalties, not exceeding a division 6 fine, for breach of, or non-compliance with, any regulation.

(3) A regulation under this Act—

(a) may be of general or limited application;

(b) may leave a matter in respect of which regulations may be made to be determined according to the discretion of the Minister or the Commission;

and

(c) may make provision for facilitating the proof of matters requiring proof for the purposes of the regulations.

SCHEDULE 1

Repeal and Transitional Provisions

1. The *Building Societies Act, 1975*, is repealed.

2. (1) Subject to this Act, a building society or association registered under the repealed Act immediately before the commencement of this Act continues in existence as if it were a building society or association registered under this Act.

(2) Subject to this Act, a register kept by the Commission under the repealed Act, continues as a register kept by the Commission under this Act.

(3) Subject to this Act, a certificate or document issued or registered by, or filed or lodged with, the Commission under the repealed Act has effect as if it were a certificate or document issued or registered by, or filed or lodged with, the Commission under this Act.

(4) Subject to this Act, the *Building Societies Advisory Committee* established under Division II of Part II is the same committee and continues with the same membership as the committee of that name established under Division II of Part II of the repealed Act.

(5) An approval given by the Commission under Division IV of Part III of the repealed Act authorizing a building society to use a name other than its registered name has effect as if it were an approval under Division VII of Part III of this Act.

(6) A notice issued by the Minister and published in the *Gazette* under section 27 of the repealed Act has effect as if it were a notice so issued and published under Division I of Part V of this Act.

(7) A guarantee given under Division V of Part V of the repealed Act has effect as if it were a guarantee under Division VII of Part V of this Act.

(8) The Commission may, by notice published in the *Gazette*, exempt—

(a) building societies, foreign building societies or associations generally;

(b) a specified class of building societies, foreign building societies or associations;

or

(c) a specified building society, foreign building society or association,

from any provisions of this Act.

(9) An exemption under this clause—

(a) may be conditional or unconditional;

(b) may be limited in its effect to a specified period.

(10) The Commission may, by notice in the *Gazette*, vary or revoke an exemption under this clause.

(11) A decision of the Commission to issue, refuse, vary or revoke an exemption, or as to the conditions or period of effect of an exemption, under this clause is final.

(12) An exemption may not be granted under this clause after the expiration of 18 months from the commencement of this Act and, if an exemption under this clause is not limited in its effect to a period expiring before the expiration of that period of 18 months, the exemption ceases to have effect on the expiration of that period of 18 months.

(13) The *Acts Interpretation Act, 1915*, applies, except to the extent of any inconsistency with the provisions of this schedule, to the repeal effected by clause 1.

SCHEDULE 2

Order of Priority of Registrable Charges

1. (1) A registered charge on property of a building society has priority over—

- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;
- (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created;

and

- (c) an unregistered charge on the property created after the creation of the registered charge.

(2) A registered charge on property of a building society is postponed to—

- (a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

and

- (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

2. An unregistered charge on the property of a building society has priority over—

- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under clause 1;

and

- (b) another unregistered charge on the property created after the first mentioned unregistered charge.

3. (1) Except as provided by the succeeding subclauses of this clause, any priority accorded by this schedule to a charge over another charge does not extend to any liability that, at the priority time in relation to the first mentioned charge, is not a present liability.

(2) Where a registered charge on property of a building society secures—

- (a) a present liability and a prospective liability of an unspecified amount;

or

- (b) a prospective liability of an unspecified amount,

any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first mentioned charge.

(3) Where a registered charge on property of a building society secures—

(a) a present liability and a prospective liability up to a specified maximum amount;

or

(b) a prospective liability up to a specified maximum amount,

and the notice lodged with the Commission under section 87 or 88 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this schedule to the charge over another charge extends to any prospective liability secured by the first mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first mentioned charge and notwithstanding that the chargee in relation to the first mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

(4) Where—

(a) a registered charge on property of a building society secures—

(i) a present liability and a prospective liability up to a specified maximum amount;

or

(ii) a prospective liability up to a specified maximum amount,

but the notice lodged with the Commission under section 87 or 88 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified;

or

(b) a registered charge on property of a building society secures a prospective liability of an unspecified amount,

the following provisions have effect:

(c) any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first mentioned charge has actual knowledge extends to any prospective liability secured by the first mentioned charge that had become a present liability at the time when the chargee in relation to the first mentioned charge first obtained actual knowledge of the other charge;

and

(d) any priority accorded by this schedule to the charge over another charge of which the chargee in relation to the first mentioned charge has actual knowledge extends to any prospective liability secured by the first mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first mentioned charge and notwithstanding that the chargee in relation to the first mentioned charge had actual knowledge of the other charge at the time when the advance was made.

4. Where, by virtue of the definition of "priority time" in clause 7, a registered charge has two or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities is, for the purposes of this schedule, to be taken to be secured by a separate registered charge the priority time of which is the priority time of the first mentioned registered charge that relates to the liability concerned.

5. A reference in this schedule to a person having notice of a charge includes a reference to the person having constructive notice of the charge.

6. In this schedule—

(a) a reference to a prior registered charge in relation to another registered charge is a reference to a charge the priority time of which is earlier than the priority time of the other charge;

and

(b) a reference to a subsequent registered charge in relation to another registered charge is a reference to a charge the priority time of which is later than the priority time of the other registered charge.

7. In this schedule—

"priority time", in relation to a registered charge, means—

(a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 89;

(b) where a notice has been lodged under section 88 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division VI of Part IV—the earlier or earliest time and date appearing in the Register in relation to the charge, being a time and date entered in the Register pursuant to section 89;

and

(c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged with the Commission under section 93(2)—the time and date entered in the Register in relation to the charge pursuant to section 89(12):

"registered charge" means a charge that is registered under Division VI of Part IV:

"unregistered charge" means a charge that is not registered under Division VI of Part IV, but does not include a charge that is not registrable.

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APPENDIX

Divisional Penalties

At the date of assent to this Act divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine |
|----------|----------------------|--------------|
| 1 | 15 years | \$60 000 |
| 2 | 10 years | \$40 000 |
| 3 | 7 years | \$30 000 |
| 4 | 4 years | \$15 000 |
| 5 | 2 years | \$8 000 |
| 6 | 1 year | \$4 000 |
| 7 | 6 months | \$2 000 |
| 8 | 3 months | \$1 000 |
| 9 | - | \$500 |
| 10 | - | \$200 |
| 11 | - | \$100 |
| 12 | - | \$50 |

Note: This appendix is provided for convenience of reference only.