

NORTHERN TERRITORY OF AUSTRALIA

BUILDING SOCIETIES ACT
No. 1 of 1982
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SCHEDULE



NORTHERN TERRITORY OF AUSTRALIA

No. 1 of 1982

AN ACT

To provide for the formation, regulation and control
of building societies

[Assented to 12 February 1982]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the Building Societies Act 1981.

2. COMMENCEMENT

The several Parts and sections of this Act shall commence on such dates as are respectively fixed by the Administrator by notice in the Gazette.

3. REPEAL

The Acts and Ordinance specified in the Schedule are repealed.

4. TRANSITIONAL

(1) Unless the contrary intention appears, the provisions of this section are in addition to, and not in derogation of, the provisions of Part III of the Interpretation Act.

(2) Unless the contrary intention appears in this Act, all persons, things and circumstances appointed or created by or under the repealed Act or existing or continuing under the repealed Act immediately before the commencement of this Act shall, under and subject to this Act, continue to have the same status, operation and effect as they respectively would have had if this Act had not been passed.

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(3) Without affecting the generality of sub-section (2), unless the contrary intention appears in this Act, this Act does not disturb the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the repealed Act before the commencement of this Act.

5. DEFINITIONS

In this Act, unless the contrary intention appears -

"advertisement" means an invitation by any means inviting business, seeking funds or making known all or any of the activities of a society or an association or body proposing to seek registration as a building society;

"banker's books" means -

(a) books of a banker;

(b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banker; and

(c) securities or documents of title to securities in the possession or under the control of a banker whether by way of pledge or otherwise;

"board", in relation to a building society, means the board of directors of the building society;

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

"building society" means -

(a) a building society formed and registered under this Act; and

(b) a building society which was registered under the repealed Act and which was in existence immediately prior to the coming into operation of this Act;

"Committee" means the Building Societies Advisory Committee established under section 7;

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"director", in relation to a building society, includes -

- (a) a person occupying, or acting in the position of director of the building society, by whatever name called and whether or not validly appointed to occupy or duly authorized to act in the position; and
- (b) a person in accordance with whose directions or instructions the directors of the building society are accustomed to act;

"member" means a member of a building society;

"officer", in relation to a building society, means a director, secretary, treasurer or manager of the building society, and any other person empowered by the rules of the society to act or give directions in respect of the business, operations or management of the building society;

"permanent building society" means a building society which has not by its rules a fixed date, or certain event or result, when it shall terminate;

"Registrar" means the person who holds the office of Registrar of Building Societies under section 6 and includes a Deputy Registrar;

"repealed Act" means the Acts repealed by section 3, as in force immediately before that repeal;

"rule", in relation to a building society, means a rule registered under this Act or the repealed Act;

"terminating building society" means a building society which has by its rules a fixed date or certain event or result when it shall be terminated;

"valuer" means a person who is a Fellow or an Associate member of the Australian Institute of Valuers Incorporated, and includes a person who, in the opinion of the Minister, possesses equivalent qualifications.

PART II - ADMINISTRATION AND INSPECTION

6. OFFICERS AND STAFF

(1) For the purposes of this Act, the Minister may appoint -

- (a) a Registrar of Building Societies; and
- (b) a Deputy Registrar of Building Societies.

(2) The persons appointed to the offices referred to in sub-section (1) shall be employees within the meaning of the Public Service Act.

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(3) The Registrar in the performance of his functions and the exercise of his powers is subject to the written directions of the Minister.

7. BUILDING SOCIETIES ADVISORY COMMITTEE

(1) There shall be a Committee entitled the Building Societies Advisory Committee.

(2) The Committee shall consist of 5 persons appointed by the Minister of whom -

(a) one shall be the Registrar, who shall be the Chairman of the Committee;

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

(c) 2 shall be persons who are, in the opinion of the Minister, suitably qualified to represent the interests of building societies; and

(d) one person who is, in the opinion of the Minister, suitably qualified to represent the interests of consumers.

(3) Subject to sub-section (4), the Minister may appoint a suitable person to be the deputy of a member of the Committee, and such person may, in the absence of the member of whom he has been appointed a deputy, act as a member of the Committee.

(4) The Minister shall not appoint a person as the deputy of a member under sub-section (2)(b) unless that person has first been nominated by the Treasurer.

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

(6) The functions of the Committee shall be as follows:

(a) to submit recommendations to the Minister on the more effective operations of building societies;

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

(c) to keep under review the legislation relevant to the operation of building societies and, where appropriate, recommend amendments;

(d) to advise the Minister or the Registrar upon matters referred to the Committee for advice; and

(e) to perform such other functions as may be prescribed.

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(7) The Chairman may at any time convene a meeting of the Committee and at any meeting of the Committee -

- (a) 3 members constitute a quorum; and
- (b) subject to this Act and the Regulations, the procedure to be followed shall be that from time to time determined by the Committee.

8. ACTING APPOINTMENTS

(1) The Minister may appoint a person to act as the Registrar or as a Deputy Registrar -

- (a) during a vacancy in the office of the Registrar or in the office of a Deputy Registrar, as the case may be, whether or not an appointment has previously been made to the office; or
- (b) during a period, or during all periods, when the Registrar or a Deputy Registrar is absent from duty or from the Territory or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Where a person is acting as the Registrar or as a Deputy Registrar in accordance with this section and the office of the Registrar or of a Deputy Registrar becomes vacant while that person is so acting then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The Minister may, at any time, terminate the appointment of a person appointed to act in accordance with this section.

(5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as the Registrar or as a Deputy Registrar in accordance with this section, he shall perform all the functions and may exercise all the powers of the Registrar or of a Deputy Registrar, as the case requires.

(7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that

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there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

9. POWERS AND FUNCTIONS OF DEPUTY REGISTRAR

A Deputy Registrar may, subject to directions given by the Registrar, perform a function and exercise a power of the Registrar.

10. JUDICIAL NOTICE

- (1) A court shall take judicial notice of -
 - (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of the Registrar; and
 - (b) the fact that that person holds or has held, or is acting or has acted in, that office,

if the signature purporting to be the signature of that person appears on an official document.

(2) In this section, a reference to a court shall be construed as including a reference to -

- (a) a judge; and
- (b) a person authorized by law or by consent of parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

11. SECRECY

(1) Subject to this section, a person who is, or has at any time been -

- (a) appointed for the purposes of this Act;
- (b) engaged as a member of the staff of the Registrar; or
- (c) authorized to perform a function or exercise a power of the Registrar on behalf of the Registrar,

shall not, except to the extent necessary to perform his official duties, or to perform a function or exercise a power, either directly or indirectly, make a record of, or divulge or communicate to a person, information that is or was acquired by him by reason of his being or having been so appointed, engaged or authorized, or make use of such information, for purposes other than the performance of his official duties or the performance of a function or exercise of a power.

Penalty: \$4,000 or imprisonment for 2 years.

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- (2) Nothing in sub-section (1) precludes a person from -
- (a) producing a document to a court in the course of criminal proceedings or in the course of proceedings under this Act or any other Act;
 - (b) divulging or communicating to a court in the course of proceedings referred to in paragraph (a) a matter or thing coming under his notice in the performance of his official duties or in the performance of a function or the exercise of a power referred to in that sub-section;
 - (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Registrar, it is in the public interest that the document be produced or the information be divulged or communicated; or
 - (d) producing a document or divulging or communicating information that is required or permitted by an Act to be produced, divulged or communicated, as the case may be.

PART III - BUILDING SOCIETIES

12. OBJECTS

The objects of a building society shall be -

- (a) to raise funds by subscription or otherwise as authorized by this Act; and
- (b) to apply those funds raised, subject to this Act and the rules of the building society, in making advances and in such other ways as are authorized by this Act and those rules.

13. FORMATION OF BUILDING SOCIETY

(1) Subject to this Part, a building society may be formed by not less than 10 or the prescribed number of natural persons who are not infants and may be formed as a permanent building society or a terminating building society.

(2) A building society shall not be formed unless there has been a meeting for the purpose of forming the building society at which there are present not less than 10 or the prescribed number of natural persons who are not infants.

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

- (a) a written statement showing the objects of the society and the reasons for believing that, when registered, it will be able to carry out its objects successfully; and
- (b) a copy of the rules that are to be tendered for registration.

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(4) If, at the formation meeting, or any subsequent or adjourned meeting, not less than 10 or the prescribed number of persons who are not infants, 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) An application for shares in a proposed building society, made prior to the registration of that building society, may not be withdrawn, and every person who makes such an application shall, upon the registration of the building society, be liable to pay to the building society -

- (a) the value of the shares for which he 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 a building society may be paid out of the funds of the building society.

14. REGISTRATION AND INCORPORATION

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

(2) An application for registration -

- (a) shall be made within 2 months after the meeting at which the first directors of the building society were elected; and
- (b) shall be accompanied by -
 - (i) a statutory declaration in the prescribed form by the chairperson and the secretary of the meeting that the requirements of this Part as to the formation have been complied with;
 - (ii) a copy of the statement presented to the meeting, signed by the chairperson and the secretary;
 - (iii) 2 copies of the proposed rules of the society, certified by the chairperson 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;

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- (v) a list containing the full name, address and occupation of each of the persons who are not infants who attended the meeting and applied for membership and shares, and the number of shares for which each of those persons applied; and
- (vi) in the case of an application for the registration of a permanent building society, such evidence as the Registrar may require that the building society will, upon registration, have available to it the funds referred to in sub-section (3).

(3) A permanent building society shall not be registered under this Act unless it has a share capital of not less than \$1,000,000, of which not less than \$500,000 is subscribed on terms that do not permit, without the consent of the Registrar, repayment before the expiration of 10 years after the day on which it is received by the building society.

(4) The Registrar shall consider each application for registration and, if satisfied -

- (a) that the building society has complied with the provisions of this Part;
- (b) that the proposed rules of the building society are not contrary to this Act and the Regulations and are adequate for the proper conduct and operation of the business of the building society;
- (c) that there are reasonable grounds for believing that the building society, if registered, will be able to carry out its objects successfully; and
- (d) that there is no good reason why the building society or the proposed rules should not be registered,

the Registrar shall register the building society and its rules and shall issue a certificate of incorporation in the prescribed form that the building society is incorporated under this Act.

(5) A building society registered under the repealed Act and in existence immediately prior to the commencement of this Act and every building society for which a certificate of incorporation is issued under this Act -

- (a) shall be a body corporate with perpetual succession and a common seal;
- (b) shall, in its corporate name, be capable of suing and being sued;
- (c) shall, subject to this Act and the rules of the building society, be capable of holding, acquiring, dealing with and disposing of real and personal property; and

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- (d) shall have the powers, rights, duties and functions conferred, imposed or prescribed by or under this Act and the rules of the building society.
- (6) A contract on behalf of any building society may be made, varied or discharged as follows:
 - (a) a contract which, if made between private persons, would, by law, be required to be in writing under seal, may be made, varied or discharged in the name and on behalf of the building society in writing under the common seal of the building society;
 - (b) a contract which, if made between private persons, would, by law, be required to be in writing and signed by the parties to be charged, may be made, varied or discharged in the name and on behalf of the building society in writing signed by a person acting under the express or implied authority of the building society; or
 - (c) a contract which, if made between private persons, would, by law, be valid although made by parol, may be made, varied or discharged without writing, in the name and on behalf of the building society by a person acting under the express or implied authority of the building society.
- (7) All contracts made in accordance with this Act shall be effectual in law, and shall be binding upon a building society and all other parties.
- (8) Subject to this Act, a building society may acquire by lease, purchase, donation, devise, bequest or otherwise, real or personal property for an object of the building society or for any purpose ancillary to those objects and may sell or lease such real or personal property.

15. RULES TO CONTAIN CERTAIN MATTERS

- (1) The rules of a building society registered under this Act shall set forth -
 - (a) the name of the building society and the principal office or place of meeting for the business of the building society;
 - (b) the manner in which the stock or funds of the building society are to be raised; the terms upon which the paid-up shares, if any, are to be issued and dealt with; whether preferential shares are to be issued and, if so, within what limits, if any; the method of transfer and transmission of shares and whether the building society intends to avail itself of the borrowing powers contained in this Act and, if so, to what extent;

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- (c) the purposes for which the funds of the building society are to be applied and the manner in which they are to be invested;
- (d) whether or not shares may be withdrawn and, if so, upon what terms;
- (e) the terms upon which mortgages may be redeemed;
- (f) the manner of altering and rescinding the rules of the building society and of making additional rules;
- (g) the duties and powers of and the manner of appointing, remunerating and removing the board of directors, auditors and other officers;
- (h) the manner of calling general and special meetings of members, the quorum necessary to constitute such meetings and the mode of voting and number of votes to be given by each member at such meetings;
- (j) the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for and on behalf of the building society;
- (k) the type of security to be given by any paid officer of the building society having the receipt or charge of any money belonging to the building society;
- (m) provision for an annual or more frequent audit of the accounts of the building society and inspection by the auditors of the mortgages and other securities belonging to the building society;
- (n) the manner in which disputes between the building society and any of its members or any person claiming by or through any member or under the rules are to be settled, whether by arbitration or otherwise;
- (p) the manner and place in which the seal of the building society is to be used and kept;
- (q) the manner and place in which the mortgages and other securities of the building society are to be kept;
- (r) the fines and forfeitures to be imposed on members of the building society;
- (s) the manner in which the building society shall be dissolved;
- (t) the manner in which a member may inspect the books and records of the building society;

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- (u) the mode of holding elections for directors and auditors; and
- (w) the manner in which a member may withdraw from membership of the building society.

(2) The Registrar shall not register any rules of a proposed building society unless -

- (a) the rules contain the prescribed provisions and otherwise conform with the requirements of this Act and the Regulations; and
- (b) the rules contain provisions requiring the building society to insure itself to an extent which is, in the opinion of the Registrar, adequate against wrongful acts and defaults of its officers and employees and against other insurable risks assumed or to be assumed by the building society in the conduct of its business.

16. EFFECT OF RULES

The rules of a building society shall bind the building society and all members and officers of the building society and all persons claiming on account of the building society or a member or officer thereof in any manner or under the rules and all persons so bound shall be deemed and taken to have full notice of the rules and shall not have power to question or impugn their legality or validity.

17. COPIES OF RULES

A building society shall furnish a person with a copy of its rules upon application and payment of the prescribed fee.

18. ALTERATION OF RULES

(1) A building society may, by special resolution, alter its rules but such an alteration shall not take effect until it has been registered in accordance with sub-section (3).

(2) A building society shall, immediately after the day on which a special resolution approving an alteration to its rules was passed, apply to the Registrar to have the alteration registered.

(3) The Registrar shall, if he is satisfied that the proposed alteration to the rules of a building society is not contrary to this Act or the Regulations, register the alteration.

19. POWER OF REGISTRAR TO REQUIRE MODIFICATION OF CERTAIN RULES

(1) Where, in the opinion of the Registrar, the rules of a building society that were registered under the repealed Act should be amended to achieve conformity with a requirement of this Act, he may, by notice in writing served on the building society, require the

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building society, within a period specified in the notice, to amend the rules in a manner specified in the notice or otherwise in a manner approved by the Registrar.

(2) If, within the period specified in the notice, the building society fails to amend the rules as required by the notice, the Registrar may, by notation upon the registered copy of the rules, amend the rules of the building society.

(3) The Registrar shall give a building society notice in writing of an amendment effected under this section and shall cause details of the amendment to be published in the Gazette and in a daily newspaper circulating in the Territory.

20. MODEL RULES

(1) The Registrar may publish in the Gazette model rules for a building society, and a building society may, by resolution, adopt as its rules the whole or any portion of the model rules, with or without modification.

(2) Where a building society is registered under this Act, then in so far as the rules lodged with the Registrar pursuant to section 14 are not inconsistent with or do not exclude or modify the model rules in force at that time, the model rules shall, so far as applicable, be the rules of the building society in the same manner and to the same extent as though contained in the rules so lodged.

(3) An amendment to the model rules shall not apply to any building society established prior to the coming into operation of the amendment, unless the building society adopts, by special resolution, the amendment in its rules.

21. NAME OF BUILDING SOCIETY

(1) A building society shall not be registered by a name, or change its name to another name, that is, in the opinion of the Registrar, undesirable.

(2) Subject to this section, a building society may, by special resolution altering its rules in the manner provided for in this Act, change its name.

(3) Upon registration of an alteration of the rules of a building society pursuant to sub-section (2), the Registrar may issue a new certificate of incorporation in the new name in lieu of a previous certificate of incorporation.

(4) A change of name of a building society shall be published, at the expense of the building society, in the manner prescribed.

22. OFFICE AND SERVICE

(1) A building society shall maintain at all times a registered office in the Territory.

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

(3) Notice of the change of address of a registered office of a building society shall be lodged with the Registrar forthwith and the Registrar shall, upon receipt of the notice, register the new address of the registered office of the building society.

(4) A document may be served on a building society or officer of a building society by leaving it at or sending it by post to the registered office of the building society.

23. PUBLICATION OF NAME

(1) A building society shall cause its name to appear in legible characters on its common seal and in legible characters on its business letters, notices, advertisements and other official publications and on its 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 shall not use a name or title other than its registered name or an abbreviation of that name approved by the Registrar.

(3) A building society shall paint or affix and keep painted or affixed on the outside of its office or place in which its business is carried on, in a conspicuous position in characters that are legible, its name or an approved abbreviation of its name and also, in the case of the registered office, the words "Registered Office".

(4) A building society that contravenes this section shall be guilty of an offence and liable to a penalty not exceeding \$100.

Default penalty: \$50.

PART IV - AMALGAMATIONS AND TRANSFERS OF ENGAGEMENTS

24. BUILDING SOCIETIES MAY AMALGAMATE

(1) Two or more permanent building societies or 2 or more terminating building societies may apply to be registered as an amalgamated society.

(2) An application shall not be made under sub-section (1) -

(a) if a building society receives written notices of objection from 25% or more of its members to the proposed amalgamation; and

(b) unless the terms of the amalgamation are approved by special resolution of each of the societies; or

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- (c) unless the Registrar has exercised his power under this Part to approve the amalgamation notwithstanding that an approval referred to in paragraphs (a) and (b) has not been obtained.
- (3) An application made under sub-section (1) shall be in the prescribed form and shall be accompanied by -
- (a) 2 copies of the proposed rules of the amalgamated society; and
 - (b) such other particulars as may be prescribed.
- (4) If the Registrar is satisfied that the building societies have complied with this Act and the Regulations and that the proposed rules of the amalgamated society are not contrary to this Act or the Regulations, the Registrar shall, upon the surrender to him of the certificates of incorporation of the amalgamating societies or production of such evidence as to the loss of any of them as the Registrar may require, register the amalgamated society and its rules and issue a certificate of incorporation in respect of the building society.
- (5) The Registrar may, following the issue of a certificate of incorporation, remove from the register the names of the building societies that were parties to the amalgamation.
- (6) An amalgamation shall not prejudice any right of a creditor of any building society that is a party to the amalgamation.
- (7) Upon the issue of a certificate of incorporation the property of each building society that is a party to an amalgamation shall, on and from the date thereof and by virtue of this Act, without any conveyance, transfer or assignment, vest in the building society formed by the amalgamation.
- (8) For the purposes of this section, the property of the building societies that are parties to an amalgamation shall include all estates and interests in property, whether real or personal, vested or contingent.
- (9) Upon production of the certificate of the Registrar and of the appropriate certificates of title, if any, the Registrar-General, as the case requires, shall make such entries or notations upon existing certificates of title, or shall issue such new certificates of title as are necessary to evidence the vesting of any estate or interest in land in an amalgamated building society pursuant to this section.
- (10) Any property which is vested in or transferred to an amalgamated building society by virtue of or in pursuance of this section shall be subject to any debt, liability or obligation affecting that property.
- (11) All debts and liabilities, whether certain or contingent, and whether then existing or capable of arising at a future time, to or with which any building society that is a party to the amalgamation

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is, at the date of the certificate of incorporation of an amalgamated building society, liable or charged, shall by virtue of this Act become and be the debts and liabilities of the building society formed by the amalgamation.

25. SUPPLEMENTARY PROVISIONS AS TO AMALGAMATION

(1) A building society desiring to amalgamate with one or more other building societies shall, unless exempted in writing by the Registrar, send to each of its members a statement the contents of which have been approved by the Registrar concerning -

- (a) the financial position of the building society and any other building society or building societies with which it proposes to amalgamate;
- (b) any interest that the officers of the building society or of any other building society concerned in the amalgamation may have in the amalgamation;
- (c) any compensation or other consideration proposed to be paid to the officers of the building society and of the other building society or building societies concerned;
- (d) the payments to be made to members of the building society and of the other building society or building societies concerned in consideration of the amalgamation; and
- (e) such other matters as the Registrar may direct.

(2) A statement under sub-section (1) shall be sent so that it will, in due course of post, reach each member not later than the time at which he would receive notice of the meeting called to pass the special resolution approving the amalgamation.

26. APPROVAL NOTWITHSTANDING ABSENCE OF APPROVAL OF SHAREHOLDERS

(1) A building society may apply to the Registrar for his approval of a proposed amalgamation of the building society with another building society, or other building societies, notwithstanding that the approval of shareholders has not been obtained in accordance with this Part.

(2) Where an application is made under sub-section (1) the building society shall give notice of the application in such manner and at such times as the Registrar may direct.

(3) The Registrar may, after hearing the building society and any other person whom he may consider entitled to be heard, grant his approval of a proposed amalgamation.

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27. TRANSFER OF ENGAGEMENTS

(1) Subject to this section, a building society may by special resolution transfer its engagements to another building society which undertakes to fulfil those engagements, and a building society may -

- (a) by special resolution; or
- (b) with the consent of the Registrar, by resolution of a general meeting or of the board of directors,

undertake to fulfil the engagements of another building society.

(2) For the purposes of the sub-section (1) -

- (a) a permanent building society is capable of transferring its engagements only to another permanent building society; and
- (b) a terminating building society is capable of transferring its engagements only to another terminating building society.

(3) A transfer of engagements between building societies under this section shall not have effect unless -

- (a) the holders of not less than two-thirds of the whole number of shares of each of the building societies have consented in writing to the transfer, or the transfer has been approved under section 26(3); and
- (b) the special resolution of the transferor building society has been registered.

(4) The Registrar, before registering a special resolution referred to in sub-section (3)(b), may require such evidence as he deems necessary to ensure -

- (a) that the transferee building society has by means authorized in this section undertaken to fulfil the engagements of the transferor building society;
- (b) that the statement referred to in section 25(1) has been issued, unless exemption has been granted by the Registrar pursuant to that section; and
- (c) that the necessary consent to the transfer has been given under sub-section (1), unless the Registrar has, pursuant to the provisions of section 26(3), approved the transfer.

(5) Within one month of the passing of a resolution under sub-section (1)(b), the building society shall notify the Registrar that the resolution has been passed and if the building society fails so to notify the Registrar, the building society and every officer of the building society who is in default shall be guilty of an offence and be liable to a penalty not exceeding \$200.

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(6) The provisions of section 24(6) to (11) inclusive and of sections 25 and 26 shall apply, with the necessary changes, to a transfer of engagements where a building society transfers the whole of its engagements to another building society and, for the purpose of that application -

- (a) a reference to amalgamation shall be construed as a reference to a transfer of engagements;
- (b) a reference to the amalgamated building society shall be construed as a reference to the building society to which the engagements are transferred;
- (c) a reference to a building society that is a party to the amalgamation shall be construed as a reference to the building society transferring its engagements; and
- (d) a reference to the issue of the certificate of incorporation shall be construed as a reference to the registration of the special resolution of the transferor building society referred to in sub-section (1).

PART V - MONETARY POLICIES OF BUILDING SOCIETIES

28. GENERAL REGULATION OF LOANS, &c., BY BUILDING SOCIETIES

(1) A building society shall not advance, invest, use, apply, pledge, encumber or otherwise deal with its moneys or other property real or personal except as authorized by this Act or its rules.

(2) Nothing in sub-section (1) shall be construed -

- (a) as authorizing a building society to do an act or thing contrary to its rules except where the contrary is expressly provided by this Act; or
- (b) as authorizing a building society to do an act or thing which is authorized by its rules but which is prohibited by or under this Act.

(3) Where a building society advances, invests, uses, applies, pledges, encumbers or otherwise deals with any of its moneys or other property real or personal in contravention of this Act, the Regulations or its rules, the officer of the building society who authorized or permitted the advance, investment, use, application, pledging, encumbering or dealing, as the case requires, shall be liable for a loss thereby to the building society by the authorization or permission given by him.

(4) Nothing in this section shall apply to any act or thing done by a building society under the express authority of another law of the Territory by which it is provided that such act or thing shall be lawful if done by a building society.

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29. LOANS

(1) Subject to this Part, a building society may, if so authorized by its rules -

- (a) make advances to members of the building society upon the security of their shares;
- (b) make advances to members and other persons and to bodies corporate secured by a mortgage of freehold or leasehold estate or a licence or lease issued under the Crown Lands Act;
- (c) make advances to other building societies;
- (d) buy and sell or assign freehold or leasehold estate or mortgages or interests in mortgages of freehold or leasehold estate;
- (e) subject to sub-section (2), purchase land, subdivide the land (where necessary) and erect buildings on such land for sale to members or other persons upon such terms as the building society thinks fit; and
- (f) generally, carry out such activities of advantage to the building society and its members as are provided for in its rules.

(2) A building society shall not employ any of its funds to purchase, subdivide or build on land except in accordance with a scheme or proposal which has been approved by the Minister after consideration of a report on that scheme or proposal by the Registrar.

(3) Nothing in this section shall be construed as precluding a building society from accepting collateral security for the repayment of an advance.

(4) Notwithstanding anything in this Act or in the rules of a building society or any other law or rule of law to the contrary, a building society may, for the purposes of this Act, mortgage or charge any of the property or other assets of the building society or assign any mortgage or interest in a mortgage.

(5) Nothing in this section shall be construed as precluding a building society from advancing money on the security of a mortgage of a home unit within the meaning of the Unit Titles Act.

30. LIMITATION ON AMOUNT OF LOAN

(1) Subject to sub-section (2), a building society shall not advance moneys on the security of property which is subject to a prior mortgage if the making of the advance would result in the amount advanced on the security of the property, including the principal and the interest and charges, if any, due under the prior mortgage,

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exceeding 75%, or such other percentage as is prescribed, of the value of the property.

(2) A building society may make an advance on the security of property which is subject to a prior mortgage exceeding the amount authorized by sub-section (1) if -

- (a) the making of the advance would not result in the amount advanced on the security of the property, including the principal and the interest and charges, if any, due under the prior mortgage, exceeding 95% or such other percentage as is prescribed of the value of the property; and
- (b) the building society takes additional security being an indemnity or guarantee by -
 - (i) the Housing Loans Insurance Corporation established by the Housing Loans Insurance Act 1965 of the Commonwealth;
 - (ii) any corporation for the time being approved by the Registrar as a mortgage insurer for the purposes of this section; or
 - (iii) a body corporate authorized under the Insurance Act 1975 of the Commonwealth to carry on business within the meaning of that Act,

securing the repayment to the building society of an amount equivalent to the amount by which the advance exceeds the amount of the maximum advance the building society is authorized under sub-section (1) to make.

(3) If a building society suffers loss by reason of the building society making an advance in contravention of this section, the members of the board of the building society who authorized the advance are jointly and severally liable for the loss.

(4) Where -

- (a) a building society advances money on the security of property which is subject to a prior mortgage; and
- (b) the board when authorizing an advance under paragraph (a), acted upon a report as to the value of the property made within the preceding period of 3 months by a person employed or instructed by the building society to value the property,

the value of the property stated in the report shall, for the purposes of sub-section (1), be the value of the property.

31. VALUATION OF SECURITIES

(1) A building society shall not employ or instruct a person to value a property tendered as a security to the building society unless

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the person has been previously approved by the Registrar and that approval has not been withdrawn by the Registrar.

(2) The Registrar may approve of a person for the purposes of sub-section (1) either unconditionally or subject to such conditions as the Registrar thinks fit.

(3) A building society shall not make an advance upon the security of a mortgage over land unless a valuation has been obtained from a valuer of the land that is to be subject to the mortgage and a valuation obtained of any buildings erected, or to be erected, upon such land.

32. BUILDING SOCIETY TO ADVISE BORROWER OF INTEREST CHARGES, &c.

Where a building society approves an application made to it by a person wishing to obtain an advance on the security of a mortgage over property, it shall -

- (a) within 7 days of approving the application; or
- (b) before requiring the person obtaining the advance to execute such documents as are necessary to obtain the security on which the advance is to be made,

whichever is the earlier, cause to be sent by prepaid post to that person at his last-known place of residence or business as disclosed in his application, a notice in the prescribed form setting out such particulars as are prescribed concerning the rate or rates of interest that is or are payable under the proposed advance at the time that the advance is proposed to be made, whether or not the rate or rates of interest may vary during the term of the advance, the date on which repayments of principal and interest are to commence, and the amount of any other fees, charges or other expenses paid or to be paid by the person.

33. MEANING OF SPECIAL ADVANCE

(1) In this Act, "special advance" means an advance made by a permanent building society on the security of a mortgage over property, being an advance of one of the following:

- (a) an advance of an amount to a body corporate except where the body corporate is an exempt proprietary company within the meaning of the Companies Act and at least one person who holds shares in the body corporate uses, or intends to use, the property for his ordinary place of residence and that person resides or will reside continuously in that property;
- (b) an advance to a person other than a body corporate or an advance to an exempt proprietary company of the kind referred to in paragraph (a), of an amount exceeding \$100,000 or, where some other amount is prescribed, the prescribed amount;

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- (c) an advance of an amount exceeding \$30,000 or, where some other amount is prescribed, the prescribed amount, secured by mortgage over vacant land;
 - (d) an advance of any amount to a person other than a body corporate or an advance to an exempt proprietary company of the kind referred to in paragraph (a), being a person or exempt proprietary company who or which, after the advance is made, is indebted to the building society in respect of that advance and any other moneys whatsoever, whether immediately repayable or not, in an aggregate amount of not less than \$100,000 or, where an amount has been prescribed pursuant to paragraph (b), the prescribed amount; or
 - (e) an advance secured by mortgage over land on which there is, or is intended to be erected -
 - (i) a building of any kind other than a dwelling-house, home unit within the meaning of the Unit Titles Act or a building of a kind commonly known as an attached dwelling; or
 - (ii) more than one dwelling-house or more than one building of the kind commonly known as an attached dwelling.
- (2) Where a member transfers or assigns to another person his interest in any property which is the subject of a mortgage to the building society, the transfer or assignment shall, for the purposes of this Act relating to special advances, be treated as an advance made by the building society to that other person of an amount equal to the amount of the mortgage debt remaining unpaid immediately after the transfer or assignment together with any arrears of interest then outstanding.
- (3) An advance made jointly to 2 or more persons shall, for the purposes of this Act, be taken to be a special advance if an advance of the like amount made under the like conditions to one of those persons would be a special advance.

34. LIMITATION ON SPECIAL ADVANCES

- (1) Subject to section 35, a permanent building society shall conduct its business to ensure that special advances are not made by it except as authorized by this section.
- (2) At the end of a financial year a permanent building society shall review the advances made by it which are outstanding at the end of that year, and shall ascertain -
- (a) the total amount of those advances which at that time have not been repaid to the building society, together with any arrears of interest in respect of those advances; and
 - (b) the proportion of that amount not repaid which is in respect of special advances together with arrears of interest in respect of those special advances.

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(3) If the proportion ascertained in accordance with subsection (2)(b) at the end of a financial year (in this section referred to, in relation to that year, as the "ascertained proportion" for that year) does not exceed 20% or such other percentage as is prescribed, the permanent building society may make special advances in the next following financial year, but so that the total amount of special advances made by it in that following financial year does not exceed 20%, or such other percentage as is prescribed, of the total amount of all advances made by the building society during that following financial year.

(4) If the ascertained proportion for a financial year exceeds 20% or such other percentage as is prescribed but does not exceed 25% or such other percentage as is prescribed, the permanent building society may make special advances in the next following financial year, but so that the total amount of special advances made by it in that following financial year does not exceed 2½% or such other percentage as is prescribed of the total amount of all advances made by the building society in that following financial year.

(5) If the ascertained proportion for a financial year exceeds 25% or such other percentage as is prescribed the permanent building society shall not make special advances in the next following financial year.

(6) A permanent building society shall not make special advances in its first financial year.

(7) Nothing in this section shall be construed to prevent a building society from making an advance to another building society.

35. PERMISSION TO MAKE SPECIAL ADVANCE TO PURCHASER OF MORTGAGED PROPERTY

(1) The provisions of this section shall have effect where a building society, in the exercise of its powers as mortgagee, proposes to sell any land, estate or interest, mortgaged to the building society, and to make to a purchaser an advance wholly or partly upon the security of that land, estate or interest, which will constitute a special advance.

(2) If, on an application to the Registrar, the building society shows to his satisfaction that the person who is, or was immediately before foreclosure, entitled to redeem the mortgage is a body corporate, or a person who is, or was immediately before foreclosure, indebted to the building society (taking into account the advance secured by the mortgage and all other debts to the building society of any description whether immediately repayable or not) in an amount exceeding the relevant amount prescribed by or in pursuance of section 33(1), the Registrar may, if he thinks fit, grant to the building society permission in writing to make the special advance to which the application relates.

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36. RESTRICTIONS ON LENDING ON VACANT LAND

(1) A building society shall not make an advance of an amount exceeding \$150,000 or where some other amount is prescribed, the prescribed amount, secured by mortgage over vacant land unless the approval of the Registrar in writing to the making of the advance has been first obtained.

(2) The Registrar shall not approve an advance referred to in sub-section (1) unless he is satisfied that -

- (a) the vacant land to be the subject of the mortgage has been or is in the course of being subdivided into lots to be used as sites for detached dwellings;
- (b) the total or a substantial proportion of the moneys to be advanced will be expended within a period of 12 months from the making of the advance in all or any of the following ways, namely, levelling or clearing the land, and in the provision of roads, drainage, water, sewerage or like facilities on the land; and
- (c) the whole of the advance will be repaid within 3 years.

37. PROHIBITION ON BALLOTING FOR LOANS

A building society shall not cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance dependent upon any chance or lot.

38. LIQUIDITY

(1) A permanent building society shall not approve, undertake or offer to make an advance unless, at the time the approval, undertaking or offer is given or made, the building society holds liquid funds equal to not less than 10% or such other percentage as is prescribed of the total of members' paid-up share capital, deposits held with and loans to the building society and amounts for which the building society is or may become liable under or in respect of bills of exchange that it has endorsed, discounted or otherwise negotiated under section 43(1).

(2) For the purposes of this section -

- (a) members' share capital, deposits held with and loans to a building society do not include such capital, deposits or loans that are not due for repayment within the next ensuing period of 5 years; and
- (b) "liquid funds" mean the aggregate of the following:
 - (i) cash at bank (but not including cheques or other bills of exchange, not being authorized bills of exchange, drawn but not presented for payment) or in hand;

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- (ii) funds upon deposit with a bank for a term to expire within 2 years;
- (iii) the value of authorized bills of exchange;
- (iv) the value of debentures, stocks and bonds that are due to mature within 2 years and are either issued by the government of the Commonwealth, a State or the Territory or are issued by a public statutory authority and guaranteed by such a government;
- (v) the value of any loan made by the building society to a corporation which is declared to be an authorized dealer in the short term money market pursuant to section 38(7)(b) of the Companies Act; and
- (vi) the value of an investment in a security or class of security approved for the time being by the Registrar for the purposes of this section,

less the amount of borrowings made by the building society by way of bank overdraft.

- (3) In sub-section(2) and in section 43 -

"authorized bill of exchange" means a bill of exchange which is payable on demand or not more than 200 days from the day on which it is acquired by the building society and which, if bought for value by the building society, would give the building society as a holder in due course a right of recourse against a bank for an amount equal to the face value of the bill;

"bank" means -

- (i) a bank as defined by section 5 of the Banking Act 1959 of the Commonwealth; and
- (ii) a bank which carries on banking business on behalf of the government of a State or the Territory under the authority of the laws of that State or the Territory.

- (4) In calculating the value of liquid funds for the purposes of this section -

- (a) the value of any investment or security shall be taken to be its cost to the building society or its market value, whichever is the less; and
- (b) the amount or value, as the case may be, of any funds shall not be taken into account if the funds are encumbered other than by a floating charge over all the assets and undertakings of the building society.

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39. RETURNS TO BE FURNISHED OF LIQUID FUNDS AND OTHER INVESTMENTS

(1) A permanent building society shall furnish to the Registrar returns setting out the amounts of and such particulars as the Registrar requires of -

- (a) liquid funds held by the building society;
- (b) other investments authorized by section 43(1); and
- (c) the totals of members' paid-up share capital, deposits held with and loans to the society,

on the last day of each calendar month, and shall also include in those returns such further information as may be required by the Registrar.

(2) A return furnished under sub-section (1) shall be furnished to the Registrar not later than 14 days after the date to which the return relates.

(3) The Registrar may, at any time by notice in writing, require a building society to furnish a special return or returns, made up to a date specified in the notice, relating to all or any of the matters referred to in sub-section (1) or to any other matter concerning the financial affairs of the building society.

40. RESERVE ACCOUNT

(1) Subject to this section, a permanent building society shall, during the complete financial year, maintain a reserve amounting to not less than 1%, or such other percentage as may be prescribed, of the amount of the aggregate liabilities of the building society as at the beginning of the last preceding financial year.

(2) For the purposes of this section, "aggregate liabilities" includes members' paid-up share capital and amounts credited to members by way of deferred bonuses.

(3) This section shall not apply to a building society registered under the repealed Act immediately prior to the coming into operation of this Act until the expiration of the first complete financial year of the building society after the date of the coming into operation of this Act and, in the second and third financial years of the building society, the amount required to be maintained in the reserve account shall be one-third and two-thirds respectively of the amounts that would otherwise be required to be maintained pursuant to sub-section (1).

(4) The Registrar may, by notice in writing served on a building society, direct that the amount to be maintained in the reserve account of the building society during a financial year shall be such lesser amount than that required by sub-section (1) or (3) as he

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specifies in the notice, and may, by subsequent notice or notices so served, vary or revoke any direction given pursuant to this sub-section.

(5) Any amount maintained in a reserve account pursuant to this section -

- (a) shall not be distributed amongst members of the building society except upon the winding up of the building society; and
- (b) may be applied to any other purpose to which the capital of the building society may be applied.

41. POWER TO PROHIBIT RAISING OF FUNDS

(1) If the Registrar is satisfied that it is in the interests of persons who may have dealings with a building society by way of membership, investment or deposit, the Registrar may order that the building society shall not -

- (a) accept money by way of deposit or otherwise borrow money;
- (b) accept payment representing the whole or part of money due by way of subscription for a share in the building society, other than a payment which fell due prior to the order of the Registrar; or
- (c) make repayment of a deposit, loan or shareholders' funds or otherwise dispose of or deal with the property or assets of the building society, without the consent of the Registrar.

(2) An order under sub-section (1) shall be by notice -

- (a) in the Gazette;
- (b) served upon the building society,

and shall take effect from the date of notice in the Gazette.

(3) An order under sub-section (1) shall not prevent a building society from borrowing money from -

- (a) another building society in accordance with section 44; or
- (b) a banking or financial institution or from a director or officer of the building society, if the Registrar consents to the loan.

(4) Where the Registrar makes an order under sub-section (1) he shall make a written report to the Minister.

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(5) If a building society contravenes the provisions of this section it shall be guilty of an offence and be liable to a penalty not exceeding \$2,000 and every officer of the building society who knowingly authorizes or permits a contravention of this section shall be liable to a penalty of \$1,000 or imprisonment for one year.

(6) A reference in this section to the amount due by way of subscription for a share in a building society does not include an amount due in respect of a share which represents interest on, or the repayment of an advance made to, the holder of the share.

42. POWER TO ACQUIRE AND DEAL WITH BUSINESS PREMISES

A permanent building society may -

- (a) purchase, hire or take upon lease property; and
- (b) sell, mortgage, exchange or let property vested in, acquired, erected or used,

for the purpose of conducting its business, whether wholly or partially.

43. INVESTMENTS

(1) Subject to sub-section (2), a building society may, from time to time, unless its rules otherwise direct, invest a portion of its funds not immediately required for its objects or purposes -

- (a) in a manner in which a trustee is authorized under the law of the Territory to invest trust funds other than by way of loan secured by mortgage over land;
- (b) upon deposit with a bank;
- (c) in authorized bills of exchange; or
- (d) in other securities approved from time to time by the Registrar for the purposes of this section.

(2) A building society shall not invest a portion of its funds pursuant to sub-section (1) in another building society (whether formed within or outside the Territory) unless and until the building society has first obtained the approval in writing of the Registrar to such investment.

(3) In addition to the powers conferred on a building society by sub-section (1) and notwithstanding anything to the contrary in its rules, a building society may invest any portion of its funds not immediately required for its objects or purposes in the purchase of mortgage debts from another building society and, for that purpose that other building society may, notwithstanding anything to the contrary in its rules, assign its mortgage debts.

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(4) A building society shall not purchase a mortgage debt in accordance with sub-section (3) unless -

- (a) the building society complies with the requirements of sections 30 and 31(3); and
- (b) the building society could have made an advance to a mortgagor of an amount equal to the purchase price of the mortgage debt.

44. BORROWING POWERS, &c.

(1) A building society may receive deposits or loans at interest from its members or other persons to be applied to the purposes of the building society but the aggregate amount of deposits and loans at interest which a permanent building society may receive shall not exceed 4 times the amount for the time being actually subscribed by shareholders of the society and interest bonuses and profits, unless the Registrar notifies the building society in writing that it may receive a greater amount.

(2) A building society shall not borrow moneys otherwise than in Australian currency or undertake to repay moneys borrowed otherwise than in Australian currency.

(3) Any member or other person depositing—with or lending money to a building society, shall not be bound to see to the application of the money, or that the building society has not exceeded its borrowing limit.

(4) A deposit with or loan to a building society made before the commencement of this Act in accordance with its rules is hereby declared to be valid and binding on the building society.

(5) A member of any building society or purchaser of any land from a building society, shall not be obliged to inquire into the application of the consideration money mentioned in any conveyance or reconveyance, transfer, receipt or statutory release, or be answerable or accountable for the misapplication, non-application or loss thereof.

(6) In addition to its other powers, a building society may -

- (a) draw bills of exchange on banks; and
- (b) after a bill of exchange has been accepted by a bank on which it is drawn, endorse, discount or otherwise negotiate such bill of exchange.

(7) In consideration of the acceptance by a bank of a bill of exchange drawn under sub-section (6), a building society may execute a legal or equitable charge in favour of the bank upon the undertaking of the building society or upon all or any part of the

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property and rights (present and future) of the building society, including its uncalled or unpaid capital subscriptions, loan payments and other moneys.

45. DISPOSAL OF CERTAIN PROPERTY

A property to which a building society may become absolutely entitled by foreclosure, surrender, or extinguishment of a right of redemption shall, as soon as practicable, be sold and converted into money.

PART VI - MEMBERSHIP AND SHARE CAPITAL OF BUILDING SOCIETIES

46. MEMBERSHIP

(1) The members of a building society shall be the persons who signed an application for membership on the formation of the building society, and such other persons as are admitted to membership in accordance with its rules.

(2) Where a building society is formed by the amalgamation of 2 or more building societies, the members of the building society formed by the amalgamation shall be the members of the amalgamating societies and such other persons as are admitted to membership in accordance with its rules formed by the amalgamation.

(3) No rights of membership shall be exercised by a person until he has made such payments in respect of membership, or acquired such shares or interests, as are provided in the rules.

47. POWER OF BUILDING SOCIETY TO JOIN ADMINISTRATIVE CORPORATION

(1) A building society may, with the approval of the Registrar, subscribe for, or purchase shares in, or lend or otherwise advance moneys to, a body corporate that has agreed to provide administrative or financial services to the building society which are likely to further the objects of the building society.

(2) A building society may contract to provide secretarial and administrative services to another building society or credit union.

(3) A building society entering into a contract shall keep separate accounts and records in respect of its business, and each co-operative society or credit union for which it provides secretarial and administrative services involving the keeping of accounts.

48. STAFF SUPERANNUATION

A building society shall have power to credit, operate and maintain or join with any other person or bodies of persons in the creation, operation or maintenance of a fund for the purpose of providing pension and superannuation benefits for officers and employees of the building society and their dependants.

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49. BUILDING SOCIETY AS COLLECTING AGENT

(1) A building society may act as a collecting agent on behalf of a company, society, person or body of persons for the collection and payment to such company, society, person or body of persons, of any premiums payable by a member in respect of any policy of insurance covering any property held by the building society as security for a loan to the member, or in respect of any life, endowment, sickness or accident policy taken out by a member as a result of any terms and conditions imposed upon the granting of a loan or under any arrangement entered into by the member whereby the proceeds of the policy would be payable to the building society in repayment of the whole or part of the member's liability under any mortgage to the building society.

(2) A building society may act as a paying or collecting agent for any other building society in respect of moneys due to that building society by its members.

50. POWER OF BUILDING SOCIETY TO JOIN ASSOCIATION

A building society, with the consent of the Registrar, may become a member of any association, federation or corporation if, in the opinion of the directors, membership of the association, federation or corporation will assist the building society in carrying on its business.

51. POWER OF BUILDING SOCIETY TO ENTER CONTRACTS OF INSURANCE, &c.

(1) Subject to this section, a building society may enter into a contract or arrangement with -

- (a) a person carrying on the business of insurance;
- (b) any association, federation or corporation of which it is a member; or
- (c) any other building society or societies or corporation approved by the Registrar -

that is for or with respect of -

- (d) indemnifying persons who invest in or loan money to or deposit money with the building society; or
- (e) maintaining the liquidity of the building society.

(2) A building society may, pursuant to any such contract or arrangement, bind itself to make contributions and deposits in connection with the contract or arrangement.

(3) Any contract or arrangement entered into under this section may provide for funds to be vested in trustees or invested by an agent, appointed under the contract or arrangement.

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(4) Any contract or arrangement entered into under this section shall have no force or effect until it has been approved by the Registrar.

52. ADMINISTRATION MAY BE DISPENSED WITH IN CERTAIN CASES

(1) If a member or person entitled, in respect of any share in, loan to or deposit with a building society dies intestate, the building society may, upon such evidence as it deems sufficient and subject to sub-section (4), pay the money or transfer such shares to any person who appears to the building society to be entitled to obtain a grant of letters of administration of the estate of the deceased, and such person shall hold the money or shares on the same trusts as if he had obtained such grant.

(2) If a member or person so entitled dies testate the building society may upon such evidence as it deems sufficient and subject to sub-section (4) pay the money or transfer the shares to the person appearing to the building society to be entitled thereto under the will of the deceased member or person.

(3) The provisions of this section shall, subject to sub-section (4), extend to any surplus arising on the sale by the building society as mortgagee of any property mortgaged by the deceased to the building society.

(4) The provisions of sub-section (1), (2) or (3) do not authorize a payment or transfer of any assets of a deceased member or person, the total value of which, together with the total value of any other assets already paid or transferred under any of those sub-sections, exceeds the amount of \$5,000 or, where some other amount is prescribed, that other amount.

(5) Any payment or transfer made by the building society in accordance with this section shall be valid and effectual against any demand made upon the building society by any other person.

53. CHARITABLE CONTRIBUTIONS

(1) A building society may, subject to this section and the rules of the building society, make contributions out of its funds -

(a) for charitable purposes; or

(b) for the purpose of establishing or maintaining a charitable foundation.

(2) Unless the Registrar otherwise determines, a contribution shall not be made under sub-section (1) unless -

(a) the building society achieved a surplus in each of the 3 financial years last preceding the making of the contribution; and

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- (b) the aggregate of that contribution and any previous contributions made in the same financial year does not exceed -
 - (i) 5% of the average annual surplus achieved in the 3 financial years last preceding the making of that contribution; and
 - (ii) such other proportion of that average annual surplus as is prescribed.
- (3) A contribution shall not be made under sub-section (1) for the purpose of establishing a charitable foundation unless the Minister has first given his approval in writing.
- (4) In this section, "charitable foundation" means a foundation or trust that exists, or is to be established, only for charitable purposes.

54. MINORS

- (1) Subject to any contrary provision in the rules of a building society, a person who has not attained the age of 18 years may be a member or a depositor of a building society and may execute all instruments and give all necessary acquittances.
- (2) A person who has not attained the age of 18 years shall not -
 - (a) be entitled to exercise any vote at any meeting of a building society; or
 - (b) without leave of the Supreme Court be entitled to borrow moneys from the building society.

55. REPRESENTATIVES OF CORPORATE MEMBERS

- (1) Where a body corporate is a member of a building society it may from time to time by notice in writing served on the building society appoint a person to represent it at a meeting of members of the building society and may, by notice so served, revoke such appointment.
- (2) A person appointed under sub-section (1) -
 - (a) shall be entitled to receive notice of all meetings in the same manner as other members of a building society, and shall be entitled to exercise the same rights of voting, either by person or by proxy, as a natural person who is a member of the building society; and
 - (b) shall be eligible to be elected to the board of directors of the building society.

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56. SHARE CAPITAL

(1) A building society may, from time to time, raise funds by the issue of shares.

(2) Shares issued under sub-section (1) may be of one or more classes or denominations and shall be issued either as shares fully paid-up, or as shares to be paid for by periodical or other subscription.

(3) The rules of a building society may provide -

(a) for the withdrawal by a member of his share capital;

(b) for the payment of differential rates of dividend or interest in respect of varying classes of shares; and

(c) for rights entitling the holder of a class of shares to receive, instead of a dividend, interest on the shares of a class which are fully paid-up at such rate as is determined by the board.

(4) The rules of a building society shall not provide for share capital to be repaid in priority to funds of the building society consisting of deposits made with the building society.

(5) The rules of a building society may provide for the cancellation of shares or the withdrawal of share capital, but no such rules shall be registered unless the Registrar approves of the provisions governing the cancellation of shares or the withdrawal of share capital.

(6) The share capital of a permanent building society, other than a building society that was, before the commencement of this Act, registered under the repealed Act, must at no time be less than \$1,000,000.

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

(8) The liability of a member of a building society in respect of a share on which a loan has been made shall be limited to the amount payable under mortgage or other security by which that loan is secured together with the amount, if any, in arrears in respect of the share.

(9) A balance unpaid upon a share shall be paid by periodic subscription or in such other manner as may be specified by the rules.

(10) A building society shall not, without the consent of the Minister -

(a) issue shares to, or to the nominee of, a body corporate if the issue would result in -

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- (i) the shares held beneficially by any body corporate being in excess of 25% of the subscribed capital for the time being of the building society; or
 - (ii) the aggregate of the shares held beneficially by bodies corporate being in excess of 50% of the subscribed capital for the time being of the building society; or
 - (b) issue shares to, or to the nominee of, a person not being a body corporate if the issue would result in the shares held beneficially by any one person, not being a body corporate, being in excess of 25% of the subscribed capital for the time being of the building society.
- (11) Subject to the provisions of sub-section (10), a building society may, with the approval of the Registrar, hold shares in another building society.

- (12) A share may be held by 2 or more persons jointly.

57. SHARES JOINTLY HELD

(1) Subject to the rules of a building society, where a share in the building society is held jointly, any notice or other document may be served, given or sent by the building society to the joint holders by being given or sent to the primary joint holder.

- (2) For the purpose -

- (a) of determining who is qualified to vote on a resolution at a meeting of a building society;
- (b) of determining, where relevant, the number of votes any person may give at a meeting of the building society; and
- (c) of determining the number or proportion of any members required to give effect to any provision of this Act or the rules of a building society,

the shares shall be treated as being held by the primary joint holder alone.

(3) For the purposes of this section, the primary joint holder of shares in a building society is the member whose name appears first in the register of members of the building society.

(4) The joint holders of any shares in a building society shall be entitled to choose the order in which they are named in the register of shares but, failing any such choice, the building society may enter their names in such order as it thinks fit.

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58. CHARGE AND SET OFF

A building society shall, in respect of a debt due from a member or past member of the building society, have a charge upon the shares of the member, or past member, and upon dividend, interest, bonus or rebate payable to the member or past member and may set off any amount payable to the member or past member against the debt.

59. ENFORCEMENT OF CHARGE

(1) The charge created by section 58 may be enforced by the appropriation by a building society of the share capital or other moneys subject to the charge.

(2) A share in respect of which the whole of the capital has been so appropriated under sub-section (1) shall be cancelled by the building society.

PART VII - MANAGEMENT

60. BOARD OF DIRECTORS

(1) The business of a building society shall be managed and controlled by a board of directors to be appointed and hold office, subject to this Act, in accordance with the rules of the building society and, for that purpose the board, subject to this section, shall have and may exercise the powers of the building society.

(2) The powers of the board of directors of a building society shall be subject to any restrictions imposed upon it by this Act, by the rules of the building society or by a resolution of a general meeting of the building society.

(3) The acts of a director of a building society shall be valid notwithstanding a defect that may afterwards be discovered in his appointment or qualification.

(4) A director of a building society shall act honestly and diligently in the discharge of the duties of his office.

(5) A meeting of the board of directors of a building society shall be held as often as may be necessary for properly conducting the business of the building society and not more than 2 months after the last preceding meeting of the board in the case of a permanent building society and not more than 3 months after the last preceding meeting of the board in the case of any other building society.

(6) A quorum at a meeting of the directors of a building society shall be as specified by the rules of the building society but shall not in any case be less than half the number of the directors.

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(7) A director of a building society shall not be removed from, or be required to vacate, his office by reason of any resolution, request or notice of the directors, or any of them, notwithstanding anything in the rules of the building society.

(8) A director of a building society may, if authorized to do so by the rules of the building society, appoint a deputy to act in his place and be a director of the building society.

(9) A director of a building society acting in the business or operations of the building society in accordance with this Act and the rules of the building society or a resolution duly passed by the board shall be the agent of the building society.

61. AGE OF DIRECTORS

(1) Subject to this section, no person of or above the age of 72 years shall be appointed or act as a director of a building society but nothing in this sub-section prevents a person from acting as a director of a building society during the period commencing on the day on which he attains the age of 72 years and ending at the conclusion of the annual general meeting commencing next after that day.

(2) The office of a director of a building society becomes vacant at the conclusion of the annual general meeting commencing after the director attains the age of 72 years.

(3) An act done by a person as a director of a building society shall be valid notwithstanding that it is afterwards discovered that he was of or over the age of 72 years at the time of his appointment or that his appointment had terminated by virtue of sub-section (2).

(4) Where the office of a director of a building society has become vacant by virtue of sub-section (2), no provision for the automatic reappointment of retiring directors in default of another appointment applies in relation to that first-mentioned director.

(5) If a vacancy created by virtue of sub-section (2) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

(6) A person of or over the age of 72 years may, by a resolution stating the age of that person, being a resolution -

- (a) of which not less than 14 days written notice has been given to the members entitled to vote stating that the person is a candidate for election who is of or over the age of 72 years and stating his age; and
- (b) which is passed by a majority of not less than three-quarters of such members as, being entitled so to do, vote in person or where proxies are allowed, by proxy at a general meeting of that building society,

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be appointed or reappointed as a director of that building society to hold office until the conclusion of the next annual general meeting of the building society.

(7) Notwithstanding any other provision of this Act or anything contained in the rules of a building society -

- (a) a person shall not, after the coming into operation of this Act, be appointed a director of a building society for life, for an indefinite term or for a term exceeding 5 years; and
- (b) where, immediately prior to the coming into operation of this Act, a person held office as a director for life, for an indefinite term or for a term not due to expire within the expiration of 5 years after that date, the term of office of that person as a director shall, unless sooner determined, determine at the expiration of 5 years immediately following that date,

but nothing in this sub-section renders a person whose term of office as director expires or determines, ineligible for reappointment.

(8) This section does not affect any provision of the rules of a building society providing that a director of the building society is to be disqualified from holding office upon attaining the age of 72 years or such lesser age specified in the rules.

62. APPOINTMENT OF DIRECTORS

(1) Subject to sub-section (2), a building society shall have not less than 5 directors.

(2) A building society which is not a permanent building society may, with the approval of the Registrar, have less than 5 but shall have not less than 3 directors.

(3) A person shall not be eligible to be appointed a director of a building society if that person has been convicted -

- (a) upon indictment of any offence in connection with the promotion, formation or management of a body corporate;
- (b) of any offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding 3 months; or
- (c) of any prescribed offence.

(4) A person who is an undischarged bankrupt shall not as a director of be in any way, whether directly or indirectly, concerned in or take part in the management of a building society without leave from the Supreme Court.

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(5) The office of a director of a building society shall become vacant in such circumstances, if any, as may be specified by the rules of the building society and, in any event shall become vacant where the director -

- (a) absents himself from 3 consecutive ordinary meetings of the board without having obtained leave of absence from that board;
- (b) becomes a bankrupt or insolvent debtor or bound by a composition in favour of his creditors or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors;
- (c) is convicted of any offence referred to in sub-section (3);
- (d) through mental or physical infirmity or sickness is unable satisfactorily to carry out the duties and perform the functions of the office;
- (e) tenders to the board resignation from the office by notice in writing signed by him;
- (f) fails to pay money due by him to the building society within 2 months after it becomes so due;
- (g) ceases to be a member of the society; or
- (h) dies,

and any vacancy so occurring shall be filled as specified by the rules of the building society.

(6) The board of directors of a building society shall, in accordance with the rules of the building society, elect one of the directors to be chairperson of the board, and any chairperson so appointed shall hold office, retire and be liable to be removed in accordance with those rules.

(7) Within 2 years of the commencement of this Act the majority of directors of a building society shall be permanently resident in the Territory.

(8) Subject to the rules of a building society, not more than 2 employees of the building society may be appointed directors of the building society.

(9) Where a change occurs in the composition of the board of a building society, the building society shall cause full particulars to be given in writing to the Registrar within 14 days of the change.

(10) A provision, whether contained in the rules of a building society or in a contract with a building society or otherwise, for exempting an officer or auditor of the building society from, or

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indemnifying him against, liability that by law would otherwise attach to him in respect of negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the building society, is void.

63. DISCLOSURE OF INTEREST BY DIRECTORS

(1) Subject to the provisions of this section, a director of a building society who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the building society shall declare the nature of his interest to the board and in accordance with this section.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director of a building society shall be made at the meeting of the board at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the board held after he becomes interested in the proposed contract.

(3) Where the director of a building society becomes interested in a contract with the society after it is made, the declaration required by this section shall be made at the first meeting of the board held after he becomes interested in the contract.

(4) For the purposes of this section, a general notice in writing given by a director of a building society to the effect that he is a member of a specified body corporate or firm, and is to be regarded as interested in a contract which may, after the date on the notice, be made with that body corporate or firm is a sufficient declaration to the board to which it is given of the interest of the director by whom it is given in a contract made after that date with that body corporate or firm.

(5) A director of a building society need not make a declaration or give a notice under this section by attending in person at a meeting of the board, if he takes reasonable steps to secure that the declaration or notice is read at the meeting.

(6) A director of a building society who fails to comply with the provisions of sub-section (1) commits an offence and is liable to a penalty not exceeding \$1,000.

(7) Nothing in this section shall be taken to prejudice the operation of a rule of law restricting directors of a building society from having an interest in a contract with the building society.

(8) The secretary of a building society shall record a declaration under this section in the minutes of the meeting at which it is made.

(9) A director of a building society shall not vote on a question in which he has a direct or indirect pecuniary interest otherwise than in common with the other members of the building society and, in the event of his so voting, his vote shall not be valid or counted.

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64. DIRECTOR NOT TO BORROW FROM SOCIETY, &c.

(1) A director of a building society shall not borrow from the building society and the building society shall not make any advance to a director, except by special resolution of the building society and, if any advance is made in contravention of this sub-section, the directors who authorized the advance are jointly and severally liable for any loss suffered by the building society in respect of such advance.

(2) A building society shall not make any advance to any officer of the building society who is not a director unless the making of the advance has been first approved at a meeting of the board.

(3) A director or other officer of a building society is entitled to be paid such fees and expenses as are fixed by a general meeting of the building society but not exceeding such maximum amounts as may be prescribed by the Regulations.

(4) For the purposes of this section and of sections 63 and 65, any thing done by a proprietary company within the meaning of the Companies Act of which a director or other officer of a building society is a member shall be deemed to have been done by that director or other officer, as the case may be.

65. DIRECTOR NOT TO SELL LAND TO MEMBER, &c.

Except where specifically authorized by a special resolution of a building society, no director or other officer of the building society shall -

- (a) sell any land, not being land on which his ordinary place of residence is erected, or act as agent for the sale of land, to a member of the building society who proposes to pay for that land, either in whole or in part, out of an advance made by the building society;
- (b) undertake the erection, or act as agent in respect of the erection, of a dwelling-house for a member of the building society who proposes to pay for such erection, either in whole or in part, out of an advance made by the building society; or
- (c) accept as payment in whole or in part of moneys due to him by a member of the building society all or part of an advance made to that member by the building society.

66. MEETINGS

(1) The annual general meeting of a building society shall be held within 3 months after the close of the building society's financial year or within such further time as may be allowed by the Registrar.

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(2) Other meetings of a building society shall be held, or may be called, as specified by the rules of the building society.

(3) At a meeting of a building society, no business shall be transacted unless a quorum of members, as specified by the rules of the building society, is present at the time the meeting is considering that business.

(4) The rules of a building society shall specify -

(a) the method of giving notice of a meeting of the building society; and

(b) all matters relating to voting at a meeting of the building society, including the voting rights of members, entitlement to vote by proxy and the right of the chairperson to exercise a casting vote.

67. SPECIAL RESOLUTION

(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 persons who, being present either personally or by proxy and entitled to vote, register their vote in favour of the resolution.

(2) Unless a poll is demanded, a declaration by the chairperson of a meeting that a resolution has been carried by a specified majority shall be conclusive evidence of the fact.

(3) A building society shall, within 28 days of a meeting at which a special resolution has been passed, submit the resolution to the Registrar for registration.

(4) A special resolution shall not take effect until registered.

68. ACCOUNTS, RETURNS, AUDIT, &c.

(1) A building society shall -

(a) cause to be kept such books of account with respect to its transactions and assets and liabilities as are necessary to give a true and fair view of the state of the affairs of the building society and to explain its transactions;

(b) establish and maintain a system of control and inspection of its books of account and a system for supervising its cash holdings and all receipts and remittances; and

(c) establish and maintain a system to ensure the safe custody of all documents of title and securities belonging to the building society, and of the documents of title and deeds relating to property mortgaged to the building society.

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(2) The directors of a building society shall lay before the building society at the annual general meeting -

(a) a revenue and appropriation account for the last financial year ending before the date of the annual general meeting; and

(b) a balance sheet as at the end of that financial year.

(3) A balance sheet of a building society shall give a true and fair view of the state of the affairs of the building society as at the end of its financial year, and every revenue and appropriation account of a building society shall give a true and fair view of the income and expenditure of the building society for the financial year.

(4) Without limiting the operation of another provision of this Act -

(a) a balance sheet and every revenue and appropriation account of a building society shall be in the prescribed form; and

(b) there shall be included in every balance sheet and revenue and appropriation account of a building society such particulars as are prescribed.

(5) A balance sheet of a building society shall be signed on behalf of the board by 2 of the directors of the building society and the manager or secretary of it, and, unless a balance sheet has been signed as required by this sub-section, neither it nor a copy nor extract from it shall be issued, circulated or published.

(6) The revenue and appropriation account of a building society shall be annexed to the balance sheet, and the auditor's report shall be attached to that balance sheet, and the revenue and appropriation account so annexed shall be approved by the board before the balance sheet is signed on its behalf.

(7) A copy of a balance sheet of a building society shall not be issued, circulated or published unless -

(a) there is annexed a copy of the revenue and appropriation account; and

(b) there is attached a copy of the auditor's report.

(8) The directors of a building society shall prepare for submission to the annual general meeting of the building society a report in the prescribed manner upon the affairs of the building society and such report shall contain a statement by the directors that the accounts and records of the building society comply with the provisions of the Act and the Regulations.

(9) Every report prepared in pursuance of sub-section (8) shall include a statement setting out, for the financial year last ending before the annual general meeting at which the report is submitted -

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- (a) the total amount advanced during the financial year by the building society on the security of freehold or leasehold property, and the total number of mortgages executed in favour of the building society during that year;
 - (b) the total amount of money received during the financial year by way of investments in, or loans to, the building society from members and depositors, and the total amount of money paid out by the building society by way of repayment of the principal value of shares in the building society, or by way of repayment of sums lent to the building society by depositors;
 - (c) the number of cases in which, at the end of the financial year, a mortgagor was in arrears with payments due to the building society under his mortgage on account of principal and interest to an amount which exceeded the amount which fell due under the mortgage on account of principal and interest in that financial year;
 - (d) the total of the amounts of the arrears at the end of the financial year in all cases referred to in paragraph (c); and
 - (e) the proportion of the total amount advanced by the building society as mentioned in paragraph (a) which represents special advances within the meaning of section 33, and the number of mortgages executed during that financial year to secure special advances.
- (10) A balance sheet of a building society shall not be issued unless there is attached to it a copy of the report prepared under sub-section (8).
- (11) A copy of a balance sheet of a building society, including every document required to be annexed to it, which is to be laid before a building society at the annual general meeting, together with a copy of the auditor's report and of the directors' report, shall, not less than 14 days before the date of the meeting, be sent to the Registrar, and be published in the prescribed manner.
- (12) A building society shall have at its office and open at all reasonable hours to inspection without a fee a copy of the latest balance sheet and revenue and appropriation account, together with the reports of the directors and the auditor.
- (13) An auditor of a building society shall make a report to the members on the accounts examined by him, and on a balance sheet and revenue and appropriation account laid before the building society at the annual general meeting during his tenure of office.
- (14) The auditor's report on a building society shall state whether the balance sheet and revenue and appropriation account are properly drawn up in accordance with the requirements of this Act and whether, in the opinion of the auditor, they give a true and fair view -

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- (a) in the case of the balance sheet - of the state of the building society's affairs as at the end of its financial year; and
- (b) in the case of the revenue and appropriation account - of the income and expenditure of the building society for its financial year,

and shall also state whether the statement required to be prepared pursuant to sub-section (9) gives a true and fair view of the matters required to be included.

(15) It is the duty of an auditor of a building society, in preparing his report under this section, to carry out such investigations as will enable him to form an opinion as to -

- (a) whether the building society has kept proper books of account;
- (b) whether the building society has maintained a satisfactory system of control over its transactions and records, and, in particular, whether the requirements of sub-section (1)(b) and (c) have been complied with; and
- (c) whether the balance sheet and revenue and appropriation account are in agreement with the books of account and records of the society,

and, if the auditor is of the opinion that the building society has failed to keep proper books of account or to maintain a satisfactory system of control over its transactions and records or, if the balance sheet and revenue and appropriation account are not in agreement with the books of account and records of the building society, the auditor shall state that fact in his report.

(16) Where an auditor of a building society, becomes aware of a prescribed matter he shall, within 7 days after becoming aware of that matter, lodge with the Registrar a written report on the matter and send a copy of the report to the building society.

(17) An auditor of a building society -

- (a) shall have a right of access at all times to the books, accounts, records and vouchers of the building society; and to all other documents relating to its affairs, including the documents of title and deeds relating to property mortgaged to the building society; and
- (b) shall be entitled to require from the directors and officers of the building society such information and explanations as he thinks necessary for the performance of his duties.

(18) If an auditor of a building society fails to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, he shall state that fact in his report.

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(19) An auditor of a building society is entitled -

- (a) to attend a general meeting of the building society, and to receive all notices of and other communications relating to a general meeting which a member of the building society is entitled to receive; and
- (b) to be heard at a meeting which he attends on a part of the business of the meeting which concerns him as auditor.

(20) A building society shall prepare an annual return in the prescribed form, relating to the affairs of the building society for the previous financial year.

(21) A copy of every annual return prepared under sub-section (20) shall be lodged with the Registrar within 3 months after the close of the financial year or within such further time as the Registrar allows.

(22) The financial year of a building society shall end on the thirtieth day of April, but this sub-section does not apply to a building society carrying on business at the date of the coming into operation of this Act, the financial year of which ends on a date other than that specified in this sub-section.

(23) Where the Registrar is satisfied that it is inappropriate to require a terminating building society to comply with a provision of this section he may, by notice in writing, exempt the terminating building society from compliance with that provision.

69. AUDITORS OF TERMINATING BUILDING SOCIETIES

(1) A terminating building society shall, at each annual general meeting, appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

(2) The directors of a terminating building society shall, within 30 days from the date of registration of the building society or from the date of any casual vacancy in the office of auditor, appoint one auditor who shall retire at the conclusion of the terminating building society's first annual general meeting following his appointment.

(3) An auditor of a terminating building society shall be a registered company auditor under the provisions of the Companies Act.

(4) A person who is -

- (a) indebted in an amount to a terminating building society other than indebtedness of the kind referred to in section 71(5)(e); or
- (b) an employee of, or a partner of an employee of, a terminating building society,

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is not capable of being an auditor of the terminating building society for the purposes of this Act.

70. AUDITORS OF PERMANENT BUILDING SOCIETIES

The Registrar may, from time to time, approve persons who are registered company auditors under the provisions of the Companies Act to be permanent building society auditors for the purposes of this Act.

71. APPOINTMENT, &c., OF AUDITOR OF PERMANENT BUILDING SOCIETY

(1) The provisions of this section apply to every permanent building society but to no other building society.

(2) The appointment of a person as an auditor of a permanent building society which was registered under the repealed Act shall expire at the conclusion of the first annual general meeting of the society held after the commencement of this Act.

(3) A permanent building society which was registered under the repealed Act shall, at the first annual general meeting of the permanent building society held after the commencement of this Act, appoint a person or a firm as an auditor of the permanent building society.

(4) Within one month after a permanent building society is registered under this Act, the directors shall appoint, unless the permanent building society has at a meeting appointed, a person or a firm, as an auditor of the permanent building society.

(5) A person shall not -

- (a) consent to be appointed as an auditor of a permanent building society;
- (b) act as an auditor of a permanent building society; or
- (c) prepare a report required by this Act to be prepared by an auditor of a permanent building society,

unless the person -

- (d) is approved as a permanent building society auditor under section 70;
- (e) is not indebted to the permanent building society other than indebtedness arising from an advance made by the permanent building society to the person for the purpose of assisting the person in the purchase or erection of a place of residence for himself or his dependants, the terms and conditions of which advance are not significantly different from other advances made to other persons by the permanent building society for the same purpose; and

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(f) is neither an employee of, nor a partner of -

(i) an employee of; or

(ii) a director of,

the permanent building society.

(6) A firm shall not -

(a) consent to be appointed as auditor of a permanent building society;

(b) act as an auditor of a permanent building society; or

(c) prepare a report required by this Act to be prepared by an auditor of a permanent building society,

unless -

(d) at least one member of the firm is ordinarily resident in the Territory;

(e) all the members of the firm ordinarily so resident are approved as permanent building society auditors under section 70;

(f) no member of the firm is indebted to the permanent building society other than indebtedness arising from an advance made by the permanent building society to the member for the purpose of assisting the member in the purchase or erection of a place of residence for himself or his dependants, the terms and conditions of which advance are not significantly different from other advances made to other persons by the permanent building society for the same purpose; and

(g) no member of the firm is an employee of, or the partner of an employee of, the permanent building society.

(7) The appointment of a firm as auditor of a permanent building society shall be taken to be the appointment of all persons who are members of the firm, whether or not resident in the Territory at the date of the appointment.

(8) Where a firm has been appointed as auditor of a permanent building society and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the society by virtue of sub-section (6), be deemed to be appointed under sub-section (3) or (4), as the case requires, as auditor of the permanent building society and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

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(9) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a permanent building society or prepares a report required by this Act to be prepared by an auditor of a permanent building society, each member of the firm is guilty of an offence.

(10) A person shall not -

- (a) if he has been appointed auditor of a permanent building society - wilfully disqualify himself while the appointment continues from acting as auditor of the permanent building society; or
- (b) if he is a member of a firm that has been appointed auditor of a permanent building society - wilfully disqualify the firm while the appointment continues from acting as auditor of the permanent building society.

(11) An auditor of a permanent building society shall hold office until death, until removal or resignation from office in accordance with this section or until ceasing to be capable of acting as auditor by reason of sub-section (5) or (6).

(12) Within 14 days after a vacancy occurs in the office of an auditor of a permanent building society, if there is no surviving or continuing auditor of the permanent building society, the permanent building society shall appoint a person or persons or a firm or firms or any combination thereof to fill the vacancy.

(13) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors, if any, may act.

(14) A permanent building society shall not appoint a person or firm as auditor of the permanent building society unless that person or firm has, before the appointment, consented by notice in writing to the permanent building society to act as auditor and has not withdrawn his or its consent by notice in writing given to the permanent building society.

(15) A report or notice made or given by a firm appointed as auditor of a permanent building society for the purpose of this Act shall be signed in the firm's name and in his own name by a member of the firm who is approved as a permanent building society auditor under section 70.

(16) Where a person or firm is appointed as an auditor of a permanent building society under sub-section (3) or (4) (not being an appointment that is deemed to be made by virtue of sub-section (8)) the permanent building society shall, within 14 days after the appointment, lodge with the Registrar a notice in writing stating that it has made the appointment and specifying the name of the person or firm.

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(17) A permanent building society may, if it has received the consent of the Registrar, remove an auditor of the permanent building society from office.

(18) An auditor of a permanent building society may, by notice in writing given to the permanent building society, resign as auditor of the permanent building society if -

- (a) he has, by notice in writing given to the Registrar, applied for consent to his resignation and, at or about the same time as he gave notice to the Registrar, notified the permanent building society in writing of his application to the Registrar; and
- (b) he has received the consent of the Registrar.

(19) The Registrar shall, as soon as practicable after receiving a notice from an auditor under sub-section (18), notify the auditor and the permanent building society whether he consents to the resignation of the auditor.

(20) A statement made by an auditor in an application to the Registrar under sub-section (18) or in answer to an inquiry by the Registrar relating to the reason for the application -

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 80; and
- (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 80) action or suit against the auditor,

and a certificate signed by the Registrar that the statement was made in the application or in answer to an inquiry by the Registrar is conclusive evidence that the statement was so made.

(21) Subject to sub-section (22) and to any order of the Supreme Court under sub-section (24), the resignation of an auditor of a permanent building society takes effect -

- (a) on the date, if any, specified for the purpose in the notice of resignation;
- (b) on the date on which the Registrar gave his consent to the resignation; or
- (c) on the date, if any, fixed by the Registrar for the purpose,

whichever last occurs.

(22) 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 sub-section (6)(d) of acting as auditor of a permanent

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building society, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the permanent building society, be deemed to be the auditor of the permanent building society until he obtains the consent of the Registrar to his retirement or withdrawal.

(23) Within 14 days after the receipt of a notice of resignation from an auditor of a permanent building society or, where an auditor of a permanent building society is removed from office, after the removal, the permanent building society shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Registrar.

(24) A person aggrieved by a refusal of consent by the Registrar to the removal or resignation of an auditor of a permanent building society may, within one month after the date of refusal, appeal to the Supreme Court from the refusal and thereupon that Court may confirm or reverse the refusal and may make such further order in the matter as it deems proper.

PART VIII - OFFICIAL MANAGEMENT AND WINDING UP

72. RECEIVERS AND MANAGERS AND OFFICIAL MANAGEMENT

(1) The provisions of the Companies Act relating to receivers and managers, official management and winding up shall, and with such modifications as far as practicably may be prescribed, extend to a building society.

(2) For the purposes of sub-section (1) a reference in any of the provisions of the Companies Act to the Registrar of Companies, shall be construed as a reference to the Registrar.

73. WINDING UP OF SOCIETIES

(1) A building society may be wound up voluntarily or by the Supreme Court, upon a certificate of the Registrar.

(2) In the case of a voluntary winding up or winding up by the Supreme Court, the building society may, subject to the provisions of this Part, be wound up in the same manner and in the same circumstances in which a company formed and registered under the Companies Act may be wound up.

(3) A building society may be wound up upon a certificate of the Registrar if the Registrar certifies -

- (a) that the number of members of the building society is reduced to less than 20 or the prescribed number;
- (b) that the building society has not commenced business within a period of 6 months after its registration or has suspended business for a period of more than 6 months;

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- (c) that the registration of the building society has been obtained by mistake or fraud;
 - (d) that the building society, being a permanent building society, has ceased to hold paid-up share capital of less than \$1,000,000 (but this paragraph does not apply to a society registered under the repealed Act);
 - (e) that the building society has, after notice by the Registrar of any breach 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 or has committed a further breach specified in the notice;
 - (f) that there are, and have been for a period of one month immediately before the date of the Registrar's certificate, insufficient directors of the building society to constitute a quorum as provided by the rules of the building society; or
 - (g) that following an inquiry pursuant to the provisions of this Act into the affairs of a building society or the working and financial condition of a building society, in the interests of members or creditors of the building society, it should be wound up.
- (4) Where the Registrar grants a certificate under this section he may appoint a person to be the liquidator of the building society, and the liquidator shall give such security as may be prescribed and be entitled to receive such fees as shall be fixed by the Registrar upon the advice of the Auditor-General.
- (5) The Registrar shall, within 10 days after appointing a liquidator of a building society, give notice of that appointment in the Gazette.
- (6) A winding up on the certificate of the Registrar -
- (a) shall commence on the day that the certificate is given; and
 - (b) shall be carried out in the prescribed manner.

74. LIQUIDATOR

Where a building society is being voluntarily wound up and a vacancy occurs in the office of liquidator that, in the opinion of the Registrar, is unlikely to be filled in the manner provided by the Companies Act, the Registrar may appoint a person to be liquidator.

75. REMUNERATION OF LIQUIDATOR

The remuneration paid to the liquidator of a building society voluntarily wound up shall not exceed such fees as shall be fixed by the Registrar upon the advice of the Auditor-General.

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76. CANCELLATION

As soon as may be practicable after a building society is dissolved, the Registrar shall cancel the registration of the building society.

PART IX - EVIDENCE AND OFFENCES

Division 1 - Evidence

77. EVIDENTIARY PROVISIONS

(1) A document purporting to be a certificate of incorporation of a building society issued by the Registrar under this Act or the repealed Act shall be accepted in legal proceedings as proof of the incorporation and registration of the building society, in the absence of proof to the contrary.

(2) A document purporting to be a copy of the rules of a building society and to be certified by the Registrar as a true copy of the rules of that building society shall be accepted in legal proceedings as a true copy of those rules, in the absence of proof to the contrary.

(3) A document purporting to be a copy of, or extract from, a record of a building society, and to be certified to be a true copy of, or extract from, such a record by the secretary of the building society shall be accepted in any legal proceedings to be a true copy of, or extract from, that record, in the absence of proof to the contrary.

(4) A document purporting to bear the common seal of a building society shall be accepted in legal proceedings as a document that bears the common seal, duly affixed, of that building society, in the absence of proof to the contrary.

Division 2 - Offences

78. USE OF WORDS "BUILDING SOCIETY", &c.

(1) Subject to this section, a person or body of persons, whether incorporated or unincorporated, other than a building society registered under this Act shall not -

- (a) trade, carry on business, or advertise for share capital, deposits or loan funds under any name or title of which the words "building society" or "building societies" form a part;
- (b) trade or carry on business as a building society; or
- (c) in any manner hold out that its trade or business is that of a building society.

Penalty: \$1,000.

Default penalty: \$200.

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(2) For the purposes of this section, where a person or body of persons, whether incorporated or unincorporated, administers a fund or scheme into or by which members of a group contribute moneys to be applied solely or principally in loans to those members, secured by mortgage over land, for the purpose of purchasing or building dwelling-houses in which the members propose to reside, that person or body of persons shall be deemed to be trading or carrying on business as a building society.

(3) A body corporate, society, association, partnership or body which consists of 10 or more persons and is capable of registration or incorporation under this Act, or is intending to trade or carry on business as a building society shall not, after the commencement of this Act, be formed or operate or carry on business in the Territory, unless it is registered and continues to be registered as a building society and authorized to operate as such under and by virtue of this Act.

(4) A body corporate, society, association, partnership or body of persons formed, or intended to be formed or incorporated for the purposes of trading or carrying on business as a building society shall not be registered under the provisions of any Act other than this Act.

79. TOO FEW MEMBERS, &c.

(1) If a permanent building society continues for a period of one month to carry on business -

(a) after the number of its members is reduced below 20; or

(b) after it ceases to have a paid-up share capital of at least \$1,000,000,

the building society shall be guilty of an offence.

Penalty: \$500.

Default penalty: \$200.

(2) Sub-section (1) shall not apply in respect of a building society registered under the repealed Act.

80. CERTAIN ACTS PROHIBITED IN RELATION TO LOANS

(1) If a person seeks, claims or receives a commission, fee or reward (whether pecuniary or otherwise) from another person as a consideration or charge for procuring or obtaining, or offering or attempting to procure or obtain, for any person an advance from a building society he shall, unless he is an officer or employee of the building society, be guilty of an offence.

Penalty: \$1,000.

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(2) A person who offers or pays a commission, fee or reward, whether pecuniary or otherwise, to an officer of a building society for or in connection with a transaction or proposed transaction between the person and the building society, is guilty of an offence.

Penalty: \$2,000 or imprisonment for 6 months.

(3) A sum received in contravention of this section may be recovered by the person who paid it from the person by whom it was received in an action for debt in a court of competent jurisdiction.

81. SEEKING OF COMMISSIONS BY OFFICERS OF SOCIETIES

Notwithstanding the provisions of section 80 -

- (a) if an officer or employee of a building society accepts a commission, fee or reward (whether pecuniary or otherwise) from a person for or in connection with a transaction with the building society, he shall be guilty of an offence, and be liable to a penalty of \$1,000 or imprisonment for 6 months; and
- (b) an officer or employee who accepts a commission, fee or reward contrary to this section shall further be liable to make good to the society the value or amount of the commission, fee or reward and the sum of that value or amount may be recovered by the building society from him as a debt due to it.

82. FALSE INFORMATION

(1) A person who, in or in relation to an application or demand for money made to or on a building society -

- (a) gives information or makes a statement, knowing it to be false, to the building society or a servant or an agent of the building society; or
- (b) proffers information or a statement provided by another person knowing it to be false, to a building society or a servant or an agent of a building society,

is guilty of an offence.

Penalty: \$2,000 or imprisonment for 6 months.

(2) Where a person has been convicted of an offence against sub-section (1), the building society from which money has been obtained by the person in relation to the commission of the offence may, in respect of a mortgage or other security given to it by the person to secure the repayment of the money to the building society, exercise all such rights under the mortgage or other security as it could exercise if there were a breach of a covenant of the mortgage or a term of any contract by which the security was given, as the case may be, whether the mortgage or other security was executed by the person alone or by the person and another person or persons.

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83. FIDELITY GUARANTEE

An officer or other person shall not be authorized or employed by a building society to have the receipt or charge of any money of the building society unless a prescribed security for rendering a just and true account of money received and paid by such officer or person for the building society and for payment of money due from him to the building society has first been obtained.

84. OFFICERS TO ACCOUNT AND DELIVER UP BOOKS, &c., ON DEMAND

(1) A person who is or has been an officer or employee of a building society, his executors or administrators shall, upon demand made or notice in writing given or left at his last usual place of residence, give to the board of the building society an account of all moneys received by him from or on account of the building society, to be examined and allowed or disallowed by the board and shall, on the like demand or notice, pay over all the moneys remaining in his or their hands, and deliver all securities and effects, books, papers, and property of the building society in his or their hands or custody, to such person as the board shall appoint.

(2) In case of neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers and property as required by sub-section (1), the building society may sue upon the security given by or in respect of the officer or person concerned, or may apply to the Court by motion either upon notice or ex parte as the Supreme Court may think fit, and the Court may proceed in a summary way, and make such order thereon, and as to the costs of such application, as to the Court in its discretion seems just, which order shall be final and conclusive.

85. FALSE STATEMENTS

A building society which or person who makes or causes to be made any false entry or statement in a document which -

(a) is required by or under this Act to be made or kept, or to be sent to the Registrar; or

(b) is required to be made or kept pursuant to the rules of the building society,

is guilty of an offence.

Penalty: \$1,000.

86. DEFAULT BY SOCIETY

(1) If a building society contravenes or fails to comply with -

(a) a provision of this Act that does not provide a penalty for such contravention or failure to comply; or

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(b) the rules of a building society,
it shall be guilty of an offence.

Penalty: \$500.

(2) If a building society refuses or neglects to furnish a return or information lawfully required by the Registrar or by any other person it shall be guilty of an offence.

Penalty: \$1,000.

87. DEFAULT BY SOCIETY EXTENDED TO DIRECTORS AND OFFICERS

Where a building society is guilty of an offence against this Act, an officer of the society shall be guilty of the same offence unless he proves that the offence was committed without his knowledge or that he used all due diligence to prevent the commission of the offence.

88. SAVING

If a building society contravenes or fails to comply with any provision of this Act or the rules of the building society, the rights and liabilities of the building society, or any other person, under this Act or any other Act or law, shall not be, except where the contrary is expressly provided by this Act or those rules, affected or prejudiced thereby.

89. APPEALS AND REVIEWS OF DECISIONS OF REGISTRAR

(1) A building society or person aggrieved by a decision made by the Registrar under this Act (not being a decision to consent to or refuse the resignation or removal of an auditor of a permanent building society) may request the Registrar to review his decision and the Registrar shall afford the building society or person an opportunity to appear before him and make submissions and give evidence to the Registrar in relation to the matter.

(2) Subject to this Act, the Registrar may confirm, reverse or vary his decision and, where the building society or person concerned is still aggrieved, it or he may appeal to the Supreme Court which may confirm, reverse or vary the decision of the Registrar or give such other directions in the matter as seem proper.

(3) Where, by this Act an act or decision of the Registrar is required to be made or given with the approval of the Minister, the Registrar shall not pursuant to sub-section (1) reverse or vary such a decision unless the Minister also approves of that reversal or variation.

(4) In this section a reference to an act or decision of the Registrar shall be construed as extending to an act or decision of an assistant or Deputy Registrar or delegate of the Registrar exercising a power or function of the Registrar under this Act on behalf of the Registrar.

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PART X - MISCELLANEOUS

90. ADVERTISEMENT BY BUILDING SOCIETIES

(1) A person shall not, by advertisement in any form, seek members, capital or deposits in or for a proposed building society unless the contents of the advertisement have first been approved in writing by the Registrar.

(2) A building society registered after the commencement of this Act shall not commence to advertise until it has first obtained the written approval of the Registrar.

(3) A building society shall, upon receiving a direction in writing to that effect by the Registrar, discontinue the publication or issue of any advertisement which, in the opinion of the Registrar -

(a) is not a correct statement of fact; or

(b) is not in the public interest.

91. ASSOCIATED CHARGES

(1) The Registrar, may, by notice in the Gazette, fix the maximum charges which may be imposed or demanded by a building society, directly or indirectly, in connection with or incidentally to the making of advances.

(2) A building society shall not impose or demand, directly or indirectly, in connection with or incidental to the making of advances a charge which exceeds the maximum charge fixed by the Registrar under sub-section (1) at the time of the imposition or demand.

92. SPECIAL MEETING AND INQUIRY

(1) The Registrar shall, on the application of a majority of the board of a building society or of not less than one-third of the members or a class of members, or may, of his own volition but with the approval of the Minister -

(a) call a special meeting of the building society; or

(b) hold an inquiry into the affairs including the working and financial conditions of a building society.

(2) An application under sub-section (1) shall be supported by such evidence as the Registrar directs for the purpose of showing that the applicants have good reason for requiring the meeting or inquiry and that the application is made in good faith.

(3) Notice of the application made under sub-section (2) shall be given to the building society as the Registrar directs.

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(4) The applicants shall give such security for the expenses of the meeting or inquiry requested under sub-section (1) as the Registrar directs.

(5) The Registrar may direct at what time and place a meeting or inquiry is to be held and what matters are to be discussed and determined and shall give such notice to members of the holding of the meeting or inquiry as he deems fit, notwithstanding a provision in the rules of the society as to the giving of such notice.

(6) A meeting held under this section shall have all the powers of a meeting called in accordance with the rules of a building society and shall have power to appoint its own chairperson, notwithstanding any rule of the society to the contrary.

(7) The Registrar or a person nominated by him may attend and address a meeting held under this section.

(8) Expenses of and incidental to a meeting or inquiry shall be defrayed by the applicants or out of the funds of the building society or by an officer or member, or former officer or member, in such proportion as the Registrar directs and in an action for debt in any court of competent jurisdiction.

93. INSPECTIONS

(1) For the purposes of ascertaining whether a building society or a person who is or has been an officer or employee of a building society is complying or has complied with the provisions of this Act and the rules of a building society, the Registrar may require the production of and inspect and make copies of any banker's books in so far as they relate to the business of a building society and any books of a building society and any books of a person in so far as those books record affairs of a building society.

(2) The Registrar may require a bank in which funds have been deposited by a building society to furnish him with particulars of the amount of those funds and of any dealing with or disposition of those funds by the building society.

(3) A person shall not -

(a) hinder the Registrar or any Deputy Registrar in carrying out an inspection under this section; or

(b) refuse or fail to comply with a requirement under this section.

Penalty: \$2,000.

94. DEFAULT PENALTIES

(1) Where, in or at the foot of, a section or part of a section of this Act there appears the expression "Default penalty", it signifies that any person who is convicted of an offence against this Act in

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relation to that section or part of a section shall be guilty of a further offence against this Act if the offence continues after he is so convicted and liable to an additional penalty for each day during which the offence so continues of not more than the amount expressed in the section or part of the section as the amount of the default penalty.

(2) Where any offence is committed by a person by reason of his failure to comply with any provisions of this Act by or under which he is required or directed to do anything within a particular period, that offence, for the purposes of sub-section (1), shall be deemed to continue so long as the thing so required or directed to be done by him remains undone, notwithstanding that the period has elapsed.

95. ANNUAL REPORT

(1) The Registrar shall furnish to the Minister, not later than 30 September in each year, a report on his operations during the immediately preceding financial year.

(2) The Minister shall cause a copy of each report furnished to him under this section to be tabled in the Legislative Assembly within 6 sitting days of the Legislative Assembly after it has been so furnished.

96. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting the generality of sub-section (1), those regulations may -

- (a) prescribe a form for the purposes of this Act;
 - (b) prescribe, and provide for the recovery of, fees in respect of an application under this Act;
 - (c) require building societies, or building societies of a prescribed class, to keep their offices open to the public throughout prescribed periods; and
 - (d) prescribe penalties not exceeding \$200 in any case for breach of or non-compliance with a regulation.
- (3) A regulation may be made under this Act -
- (a) so as to apply generally or in a particular class of case, or particular classes of cases, at all times or at a specified time or specified times;

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- (b) so as to require a matter affected by it to be in accordance with a specified requirement, or as approved by, or to the satisfaction of, a specified person or body, or class of person or body, and so as to delegate to or confer upon a specified person or body, or class of person or body, a discretionary authority; and
- (c) so as to provide that in specified cases, or a specified class of case, or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class of person or thing or classes of persons or things may be exempted from any provision of the Regulations either wholly or to such extent as is specified.

SCHEDULE

Section 3

The Building Societies Act, 1881, of the State of South
Australia in its application in the Territory

Building Societies Ordinance 1977 (No. 40 of 1977)

Building Societies Act 1980 (No. 32 of 1980)
