

CO-OPERATION (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 3, 1974.

An Act to make further provisions with respect to the formation and administration of certain building societies and the lending of money by them; to control excessive shareholdings in certain building societies; to authorise, in certain circumstances, the appointment of an administrator to conduct the affairs of certain building societies; for these and other purposes to amend the Co-operation Act, 1923; and for purposes connected therewith. [Assented to, 26th March, 1974.]

BE

Co-operation (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 3, 1974
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

1. This Act may be cited as the "Co-operation Short title.
(Amendment) Act, 1974".

2. This Act shall commence upon such day as may be Commence-
ment.
appointed by the Governor in respect thereof and as may be
notified by proclamation published in the Gazette.

3. The Co-operation Act, 1923, is in this Act referred Principal
Act.
to as the Principal Act.

4. Part II of the Principal Act is amended— Amendment
of Part II of
Act No. 1,
1924.

(a) (i) by omitting from section 16A (1) the words Sec. 16A.
(Approval of
additional
security
required
in certain
cases.)
"twenty thousand dollars" wherever occurring
and by inserting instead the words "the
prescribed amount";

(ii) by omitting from section 16A (1) (b) the
word "value" and by inserting instead the word
"valuation";

(iii) by inserting at the end of section 16A (1) the
following words :—

In this subsection "the prescribed amount"
means \$25,000 or, where some other amount
is prescribed by the regulations for the
purposes of this subsection, the amount so
prescribed.

(b)

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No. 3, 1974
 Sec. 16C.
 (Proportion
 of special
 loans.)

(b) by inserting after section 16C (5) the following subsection:—

(6) If a loan is made by a society in contravention of this section, the society and any officer of the society who knowingly and wilfully authorises or permits the contravention are each guilty of an offence and liable to a penalty not exceeding \$1,000.

Sec. 16D.
 (Liquidity.)

(c) (i) by omitting from section 16D (2) (b) the word "and";

(ii) by omitting from section 16D (2) (c) the words "section sixty-eight of this Act." and by inserting instead the following words and paragraph :—

section 68; and

(d) as funds or investments referred to in paragraphs (a), (b) and (c) and deposited with an association or a federation pursuant to an arrangement under section 66A,

except to the extent of the amount necessary to satisfy any lien or charge on the funds and investments specified in paragraphs (a), (b) and (c).

(iii) by inserting after section 16D (3) the following subsection :—

(4) Notwithstanding subsection (1), a society may approve the making of loans from a fund comprising specific moneys borrowed by it if—

(a) the moneys borrowed are not required to be repaid by the society before the expiration of ten years except to the extent that the terms upon which the moneys are borrowed provide for the
 earlier

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earlier payment to the lender by the society of amounts not exceeding the amounts from time to time payable or paid to the society by way of interest on, or in reduction or repayment of, loans so made; and

- (b) the proceeds of the due repayment of each loan so made would be sufficient to provide for the due repayment by the society of the moneys borrowed by it.

- (d) by inserting after section 17AB the following section :—

17AC. An instrument evidencing an indemnity under section 17AB may be executed for and on behalf of the Treasurer by any other Minister of the Crown authorised by the Treasurer so to do either generally or in a particular case or in all circumstances or only in specified circumstances.

- (e) by omitting from section 18B (1) (a) (i) the words "one thousand dollars, or" and by inserting instead the words "\$1,000 in the case of a society registered before the commencement of the Co-operation (Amendment) Act, 1974, or \$5,000 in the case of a society registered after that commencement or, in either case,";

- (f) by omitting from section 18c (2) (a) (i) the words "one thousand dollars, or" and by inserting instead the words "\$1,000 in the case of a society registered before the commencement of the Co-operation (Amendment) Act, 1974, or \$5,000 in the case of a society registered after that commencement or, in either case,".

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No. 3, 1974 **5.** Part III of the Principal Act is amended—

Amendment
of Part III
of Act No.
1, 1924.

Sec. 43.
(Amalgama-
tion.)

(a) (i) by inserting after section 43 (1) the following subsections:—

(1A) Subject to this section, one or more non-terminating building societies and one or more societies mentioned in the Second Schedule may apply to be registered as an amalgamated society.

(1B) An application referred to in subsection (1A) may not be made unless—

(a) sections 69B (1) and 69B (2) have been complied with;

(b) the terms of amalgamation are approved by a special resolution of each of the societies involved; and

(c) the amalgamation is approved in writing by the holders of not less than two-thirds of the whole of the number of shares in each of the societies involved, or the amalgamation is confirmed under section 69B (3).

(ii) by omitting from section 43 (2) the words "The application" and by inserting instead the words "An application under subsection (1) or (1A)";

(iii) by inserting after section 43 (3) the following subsection :—

(3A) Upon the issue of the certificate of incorporation of an amalgamated society, the property of each society that is a party to the amalgamation shall, on and from the date thereof

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thereof and by virtue of this Act, without any conveyance, transfer or assignment thereof otherwise than as provided by this section, vest in the amalgamated society. No. 3, 1974

(iv) by omitting section 43 (4) and by inserting instead the following subsection :—

(4) Subsections (9) to (15), both inclusive, of section 41 apply in respect of the transfer to an amalgamated society of the property of an amalgamating society and to the assumption by an amalgamated society of the debts and liabilities of an amalgamating society, and they so apply as if—

- (a) the words “the society” where firstly occurring in subsections (9) and (14) were omitted and the words “a society that is a party to an amalgamation” were inserted instead;
- (b) the words “at the date of the notification in the Gazette” were omitted from subsections (9) and (14) wherever occurring and the words “immediately before the issue of the certificate of incorporation of the amalgamated society” were inserted instead;
- (c) the words “the society” were omitted from subsections (12) and (13) wherever occurring and the words “the amalgamated society” were inserted instead.

(b) by inserting in section 43A (1) after the word “Act” where firstly occurring the words “, or one or more societies mentioned in the Second Schedule,”; Sec. 43A. (Amalgamation with permanent building society.)

(c)

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No. 3, 1974
 Sec. 47.
 (Shares.)

- (c) (i) by inserting after section 47 (5B) the following subsections :—

(5C) This section does not operate to prevent a non-terminating building society or a society mentioned in the Second Schedule from issuing a share subject to a condition that prevents withdrawal of the share capital before the expiration of a specified period of time.

(5D) Where the Minister so directs by order published in the Gazette on the recommendation of the Co-operative Building Advisory Committee, a society referred to in subsection (5C) shall not, except as provided by the order, issue a share referred to in that subsection.

- (ii) by omitting section 47 (10) (b) ;

- (iii) by inserting at the end of section 47 (10) the following paragraph :—

(d) This subsection does not apply to or in respect of a non-terminating building society or a society mentioned in the Second Schedule.

- (iv) by omitting from section 47 (14A) the word "where" and by inserting instead the words "to the extent to which, in respect of those shares or any of them,";

- (v) by inserting after section 47 (14A) the following subsection :—

(14B) An order under subsection (14A) may fix rates of dividend differing according to specified circumstances.

(vi)

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- (vi) by omitting from section 47 (18) (a) the words "of three years" and by inserting instead the words "specified in the rules of the society";
- (vii) by omitting from section 47 (18) (a) the words "and whose whereabouts are unknown to the board" and by inserting instead the words "or whose whereabouts have not been known to the society, for a period so specified";
- (viii) by omitting section 47 (18) (b);
- (ix) by inserting in section 47 (18) (c) after the word "unless" the words "he has been given not less than one month's notice of its intention to do so or, where his whereabouts are unknown to the society,";
- (x) by inserting in section 47 (18) (d) after the word "subsection" the words ", but at a time specified in the rules of the society,";
- (d) by inserting after section 47A the following section :—
- 47B. (1) In this section (subsection (4) excepted) "society" means a non-terminating building society or a society mentioned in the Second Schedule. Limitation on share-holding.
- (2) For the purposes of this section—
- (a) a reference to a voting share in a society is a reference to a share in the society that confers on the holder a right to vote at a general meeting of the society;
- (b)

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- (b) a person has a relevant interest in a share in a society (not being a voting share) if he has power to withdraw the capital subscribed for the share or to exercise control over the withdrawal of that share capital;
- (c) a person has a relevant interest in a voting share in a society if he has power to exercise, or to control the exercise of, the right to vote conferred on a holder of the share;
- (d) the provisions of section 6A of the Companies Act, 1961, apply to and in respect of a relevant interest in a share in a society in the same way as they apply to and in respect of a relevant interest under that Act in a share in any other body corporate and they so apply as if—
 - (i) subsections (1), (7) and (8) had been omitted therefrom; and
 - (ii) references in that section to the disposal of a share were references to the withdrawal of the share capital subscribed for a share;
- (e) a relevant interest in a share in a society shall be disregarded if it is a relevant interest, or a relevant interest of a class, prescribed for the purposes of this paragraph; and
- (f) the prescribed proportion for a society is one-fifth or, where a lesser proportion is specified in the rules of the society, the proportion so specified.

(3)

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(3) Where a person has a relevant interest No. 3, 1974 in shares in a society (not being voting shares in a society mentioned in the Second Schedule) and the nominal amount of those shares exceeds the prescribed proportion of the nominal amount of all shares issued by the society, the society shall—

- (a) cancel sufficient of those shares in which he has the relevant interest to reduce the nominal amount of the shares to an amount that is the prescribed proportion of the nominal amount of all shares issued by the society; and
- (b) pay to each holder of a cancelled share the amount paid up on the share together with any other moneys to which that holder is entitled in respect of the share.

(4) Where—

- (a) immediately before 1st May, 1973, a person—
 - (i) had no relevant interest in voting shares in a society mentioned in the Second Schedule; or
 - (ii) had a relevant interest in voting shares in such a society and those voting shares conferred rights to cast a number of votes bearing a proportion less than the prescribed proportion to the total number of votes that could be cast in respect of all voting shares in the society; and

(b)

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- (b) after the commencement of the Co-operation (Amendment) Act, 1974, that person at any time has a relevant interest in voting shares in the society that would, but for this subsection, confer rights to cast in excess of the prescribed proportion of the total number of votes that could be cast in respect of all voting shares in the society,

the right to vote conferred on the holder of a voting share in the society in which that person has a relevant interest shall not be exercised—

- (c) without the consent in writing of the registrar; or
- (d) otherwise than in conformity with any terms, conditions, limitations and restrictions imposed by the registrar when giving his consent.

(5) Where a vote is cast in contravention of subsection (4)—

- (a) the vote shall be disregarded; and
- (b) the person referred to in that subsection who has the relevant interest in the share conferring the right to cast that vote is liable to a penalty not exceeding \$1,000.

Sec. 48.
(Reserve funds of building societies.)

- (e) by inserting in section 48 (1A) (a) after the words “winding up” the words “or on such terms and conditions as are approved by the Co-operative Building Advisory Committee”;

Sec. 66.
(Loans and deposits.)

- (f) (i) by omitting from section 66 (5A) the word “where” and by inserting instead the words “to the extent to which, in respect of those deposits or any of them,”;

(ii)

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- (ii) by inserting after section 66 (5A) the No. 3, 1974 following subsection :—
- (5B) An order under subsection (5A) may fix rates of interest differing according to specified circumstances.
- (iii) by inserting after section 66 (9) the following subsection :—
- (9A) Where the Minister so directs by order published in the Gazette on the recommendation of the Co-operative Building Advisory Committee, a non-terminating building society shall not, except as provided by the order, receive money on deposit upon the terms that it is not repayable before the expiration of a specified period that exceeds one month.
- (g) (i) by omitting from section 69 (1A) the words "A non-terminating" and by inserting instead the words "Subject to section 69A, a non-terminating"; Sec. 69. (Transfer of engagements.)
- (ii) by inserting in section 69 (1A) after the figures "1967" the words ", or a society mentioned in the Second Schedule";
- (iii) by inserting after section 69 (1A) the following subsection :—
- (1B) Subject to section 69A, a society mentioned in the Second Schedule may, by special resolution, resolve to transfer its engagements to a non-terminating building society or to a society registered under the Permanent Building Societies Act, 1967.
- (h) by inserting after section 69 the following sections :— Secs. 69A, 69B, 69C and 69D.
- 69A. (1) A transfer of engagements referred to in this section is a transfer of engagements referred to in section 69 (1A) or (1B), not being a transfer of engagements to a society registered under the Permanent Building Societies Act, 1967. Supplementary provisions relating to transfer of engagements.
- (2)

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(2) Subject to this section, where a building society resolves under section 69 (1A) or (1B) to transfer its engagements to another building society, that other 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,

undertake to fulfil the engagements of the transferor building society.

(3) A transfer of engagements between building societies does not have effect unless—

- (a) sections 69B (1) and 69B (2) have been complied with or an exemption has been granted by the registrar pursuant to section 69B (1);
- (b) the holders of not less than two-thirds of the whole number of issued shares of each of the societies have consented in writing to the transfer, or the transfer has been confirmed under section 69B (3); and
- (c) the special resolution of the transferor society has been registered.

(4) The registrar may, before he registers a special resolution referred to in subsection (3), require such evidence as he deems necessary to ensure—

- (a) that the transferee society has duly undertaken to fulfil the engagements of the transferor society;
- (b) that the statement referred to in section 69B has (unless exemption has been granted by the registrar pursuant to section 69B (1)) been duly sent; and

(c)

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(c) that—

- (i) the consent referred to in subsection (3) (b) has been given; or
- (ii) the registrar has, pursuant to section 69B (3), confirmed the transfer.

(5) Where a society that passes a resolution referred to in subsection (2) (b) fails within one month after the passing of the resolution to notify the registrar that the resolution has been passed, the society and any officer who knowingly and wilfully authorises or permits the contravention are each guilty of an offence and liable to a penalty not exceeding \$500.

(6) Upon registration of the special resolution of the transferor society, its property vests in the transferee society by virtue of this Act without any conveyance, transfer or assignment otherwise than as provided by this section.

(7) Subsections (9) to (14), both inclusive, of section 41 apply in respect of the transfer to a building society of the engagements of another building society and they so apply as if—

- (a) the words “the society” where firstly occurring in subsections (9) and (14) were omitted and the words “the transferor society” were inserted instead;
- (b) the words “at the date of the notification in the Gazette” were omitted from subsections (9) and (14) wherever occurring and the words “immediately before the registration of the special resolution of the transferor society” were inserted instead;

(c)

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- (c) the words "the society" were omitted from subsection (12) and (13) wherever occurring and the words "the transferee society" were inserted instead;
- (d) the words "the society so incorporated" were omitted from subsection (14) and the words "the transferee society" were inserted instead.

Further supplementary provisions as to amalgamation or transfer of engagements.

69B. (1) Where an amalgamation or transfer of engagements of a society is proposed and each party to the amalgamation or transfer will be either a non-terminating building society or a society mentioned in the Second Schedule, each such society shall, unless exempted by the registrar from so doing, send to each of its members a statement approved by the registrar, with respect to—

- (a) the financial position of the society sending the statement and that of the other society or societies concerned;
- (b) the interest of the directors of the society sending the statement in the amalgamation or transfer of engagements and that of the directors of the other society or societies concerned;
- (c) the compensation or other consideration proposed to be paid to the directors or other officers of the society sending the statement and of the other society or societies concerned;
- (d) the payments to be made to the members of the society sending the statement, and of the other society or societies concerned, in consideration of the amalgamation or transfer of engagements; and
- (e) such other matters as the registrar may direct.

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(2) A statement under subsection (1) No. 3, 1974 shall be sent so that it will in the ordinary course of post reach the member to whom it is sent not later than the time at which he would receive notice of the meeting called to pass the special resolution referred to in section 43 (1B) (b), 69 (1A) or 69 (1B), with respect to the amalgamation or transfer of engagements concerned.

(3) Where a society—

- (a) applies to the registrar to confirm an amalgamation or transfer of engagements notwithstanding that the consents in writing of the holders of two-thirds of the issued shares in that society have not been sought or, having been sought, have not been obtained; and
- (b) gives notice of the application in such manner, at such times and in such newspapers as the registrar directs,

the registrar may, after hearing the society and any other person he considers to be entitled to be heard, confirm the amalgamation or transfer of engagements.

69C. (1) In this section “society” means a non-terminating building society or a society mentioned in the Second Schedule. Transfer of engagements by direction of registrar.

(2) Subject to this section, the registrar may, with the approval of the Minister, direct a society—

- (a) to transfer its engagements to—
 - (i) a non-terminating building society;
 - (ii) a society mentioned in the Second Schedule; or

(iii)

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- (iii) a permanent building society registered under the Permanent Building Societies Act, 1967,
approved by the registrar; and
- (b) within a period specified by the registrar when giving the direction, or within such further period as the registrar may allow, to enter into an agreement, approved by the registrar, to give effect to the transfer of engagements directed.

(3) The registrar shall not give a direction under subsection (2) in relation to a non-terminating building society unless he gives such a certificate as would be provided for by sections 92 (3) and 92 (4) if section 92 were amended—

- (a) by omitting from subsection (3) the words “In the case of a winding-up upon a certificate of the registrar, the society may be wound up if” and by inserting instead the words “The registrar may not direct a transfer of engagements under section 69C (2) unless”;
- (b) by omitting subsections (3) (c), (3) (d) and (3) (h); and
- (c) by omitting from subsection (3) (1) the words “the society should be wound up” and by inserting instead the words “the society should transfer its engagements”.

(4) The registrar shall not give a direction under subsection (2) in relation to a society mentioned in the Second Schedule unless he gives a certificate—

- (a) that the society has suspended business for a period of more than six months;

(b)

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- (b) that the society has, wilfully and after notice No. 3, 1974 from the registrar, failed to comply with the provisions of this Act or the regulations or the rules of the society;
- (c) that there are, and have been for the period of one month that last preceded the date of the registrar's certificate, insufficient directors of the society to constitute a quorum as provided by the rules of the society; or
- (d) that, following an inquiry pursuant to the provisions of this Act into the affairs of the society or the working and financial condition of the society, it is in the interests of members or creditors of the society that the society should transfer its engagements,

and, except in the case referred to in paragraph (a), he has obtained the prior consent of the Governor to the issue of the certificate.

(5) Where a society fails to comply with a direction given under subsection (2), the registrar may notify the society that he has elected to treat the certificate given under subsection (3) or (4) in relation to the society as a certificate given under section 95A (2) or (3), as the case may require, or, except in the case of a society mentioned in the Second Schedule, as a certificate given under section 92 (3).

(6) Where the registrar notifies a society as provided by subsection (5), this Act applies to and in respect of the society as if the certificate that, pursuant to that subsection, was specified in the notice had been given by the registrar.

(7) The registrar may, before a society has, pursuant to a direction under subsection (2), agreed pursuant to subsection (2) (b) to transfer its engagements, revoke the direction.

(8)

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(8) Sections 69, 69A (subsection (7) excepted) and 69B do not apply to a transfer of engagements under this section.

(9) A transfer of engagements under this section takes effect upon a day notified by the registrar in the Gazette.

(10) An officer of a society who—

- (a) fails to take all reasonable steps to secure compliance by the society with a direction given under subsection (2); or
- (b) by a wilful act or omission is the cause of a failure by the society to comply with such a direction,

is guilty of an offence and liable to a penalty not exceeding \$500.

Certain representations may be made.

69D. (1) Where a direction is given to a society under section 69C (2), the society may, not later than fourteen days after the direction is given, make representations to the Co-operative Building Advisory Committee with respect to the direction and, where any such representations are so made, the Co-operative Building Advisory Committee shall report thereon to the Minister.

(2) The registrar shall exercise in relation to a society his powers under section 69C (7) if the Minister so directs after considering a report under subsection (1) with respect to the society.

Sec. 72.
(Name and address.)

- (i) by inserting after section 72 (2) the following subsection :—

(2A) Except where, for a specified purpose, the registrar consents in writing to the use by a society of an abbreviation or elaboration of the name of the

society,

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society, a society shall not use a name or title other than its registered name, but where a society is described by using—

- (a) the abbreviation "ltd." instead of the word "limited" forming part of its name;
- (b) the symbol "&" instead of the word "and" forming part of its name;
- (c) the abbreviation "co-op." instead of the word "co-operative" forming part of its name; or
- (d) any of those words instead of the corresponding abbreviation or symbol contained in the name of the society,

the description shall be deemed not to contravene this subsection.

- (j) by inserting after section 75 the following sections :—

75A. In relation to each person who is a director of a non-terminating building society or a society mentioned in the Second Schedule, there shall, upon receipt of the necessary particulars under section 75B, be incorporated as part of the register of directors of the society a list specifying every corporation (other than the society) of which that person is from time to time a director.

75B. (1) A director of a non-terminating building society or a society mentioned in the Second Schedule shall give notice in writing to the society of such matters relating to himself as are necessary to enable the society to keep up to date its register of directors (including the list referred to in section 75A).

(2)

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(2) A director of a society required to give a notice under subsection (1) shall give the notice not later than fourteen days after—

- (a) the commencement of the Co-operation (Amendment) Act, 1974;
- (b) the day on which he became a director of the society; or
- (c) the day on which he first became aware of the matter of which he is required to give notice,

whichever last occurs.

(3) A director of a society who fails to give the notice required by subsection (1) within the time specified by subsection (2) is guilty of an offence and liable to a penalty not exceeding \$500 and a further penalty not exceeding \$20 for every day from the time the offence is committed until the time the notice is given.

Return
to be sub-
mitted by
society.

75c. A non-terminating building society or a society mentioned in the Second Schedule shall, not later than three months after the end of its financial year, submit a return in the prescribed form to the registrar specifying, in respect of each person who, during that financial year, was a director of the society, the corporations of which, according to any notice or notices given to the society under section 75B during that financial year, that person was at any time a director.

Sec. 76.
(Returns.)

- (k) (i) by inserting in section 76 (1) after the word "change" where secondly occurring the words "and of any corporation of which, according to any notice or notices given to the society under section 75B, any new member of the board is a director".

(ii)

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(ii) by omitting from section 76 (5) the word "Any" and by inserting instead the words "Subject to subsection (6), any";

(iii) by inserting after section 76 (5) the following subsection :—

(6) Where a society is directed by the registrar so to do, the society shall submit to the registrar a special return in the form, within the time, and relating to the subject-matter, specified by the registrar when giving the direction.

6. Part IV of the Principal Act is amended—

Amendment
of Part IV
of Act No.
1, 1924.

(a) (i) by inserting at the end of section 84 (9A) the following words :—

Sec. 84.
(Board of
directors.)

In this subsection "employee of a society" includes a person, or the employee of a person, who provides the society with secretarial and administrative services.

(ii) by omitting from section 84 (11) (i) the word "society." and by inserting instead the following word and paragraphs :—

society;

(j) if, having been elected as a director pursuant to subsection (9A) he ceases to hold the qualification by virtue of which he was elected;

(k) if an administrator of the society's affairs is appointed under section 95A;
or

(l) as provided by section 84AC.

(b)

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Sec. 84AB.

(Director to disclose interest in certain contracts.)

(b) by inserting after section 84AB (8) the following subsections :—

(9) A society shall, not later than three months after the end of its financial year, give notice to the registrar in the prescribed form specifying any declaration made to the board under this section during that financial year.

(10) Where a society fails to comply with subsection (9), the society and any officer of the society who, by a wilful act or omission, is the cause of the failure by the society to comply with that subsection are each guilty of an offence and liable to a penalty not exceeding \$500 and to a further penalty not exceeding \$20 for every day during which the offence continues.

Sec. 84AC.

Director vacates office in certain circumstances.

(c) by inserting after section 84AB the following section :—

84AC. (1) Where a person is, at the same time, a director of a non-terminating building society or a society mentioned in the Second Schedule and a director of another corporation (not being an association registered under this Act) the Co-operative Building Advisory Committee may, subject to this section, determine that, in its opinion, the activities and operations in which the corporation is engaged are, or are likely to be, such that that person should not be a director of the society while he is a director of that corporation.

(2) The Co-operative Building Advisory Committee shall not make a determination under subsection (1) in relation to a director unless the director—

(a) has, by notice given to him in writing by the registrar at the direction of the Co-operative Building Advisory Committee, been informed that that Committee proposes to consider whether a determination should be made under subsection (1) with respect to a specified corporation, or specified corporations; and

(b)

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- (b) has been given an opportunity to be heard by the Co-operative Building Advisory Committee. No. 3, 1974

(3) The registrar shall, at the direction of the Co-operative Building Advisory Committee, give notice in writing of a determination under subsection (1) to the director to whom it relates and, where the registrar gives such a notice, the director may appeal to the Minister against the determination within fourteen days after the giving of the notice.

(4) Where a director of a society appeals as provided by subsection (3), the Minister may—

- (a) uphold the appeal;
- (b) dismiss the appeal; or
- (c) where the determination relates to more than one corporation, uphold or dismiss the appeal in so far as the determination relates to a corporation or corporations specified by the Minister and dismiss or uphold it in relation to the other or others.

(5) A director of a society given a notice referred to in subsection (3) vacates his office as such a director—

- (a) where he does not appeal against the determination to which the notice relates—
at the expiration of the period within which he might have appealed against that determination; or
- (b) where he so appeals and the appeal—
 - (i) is dismissed; or
 - (ii) is dismissed in respect of one or more corporations and upheld in relation to another corporation or other corporations,

at

Co-operation (Amendment).

No. 3, 1974

at the expiration of the period of seven days that next succeeds the giving to him of notice of dismissal of the appeal,

unless before the expiration of that period he ceases to be a director of any corporation in respect of which he failed to appeal or in respect of which an appeal was dismissed.

Sec. 88A.
(Certain
dealings
prohibited.)

(d) by inserting in section 88A (1) after the word "society" where firstly occurring the words ", or his spouse,";

Sec. 88AA.

(e) by inserting after section 88A the following section :—

Certain
borrowings
prohibited.

88AA. (1) For the purposes of this section—

(a) a person is associated with a director or other officer of a society if that person is—

(i) the spouse of that director or other officer;

(ii) a member, or the spouse of a member, of a partnership of which that director or other officer, or the spouse of that director or other officer, is a member; or

(iii) a corporation of which that director or other officer, or the spouse of that director or other officer, is a director; and

(b) the prescribed amount is \$50,000 or, where some other amount is prescribed by the regulations, that other amount.

(2)

Co-operation (Amendment).

(2) Where a non-terminating building society or a society mentioned in the Second Schedule makes a loan to a director or other officer of the society, or to a person associated with a director or other officer of the society, the total of the amount lent and—

(a) where the loan is to a director or other officer of the society—the amount of any existing indebtedness to the society of—

(i) that director or other officer; and

(ii) any person associated with that director or other officer; or

(b) where the loan is to a person associated with a director or other officer of the society—the amount of any existing indebtedness to the society of—

(i) that person;

(ii) any other person associated with that director or other officer; and

(iii) that director or other officer,

shall not exceed the prescribed amount.

(3) Where a director or other officer of a non-terminating building society or a society mentioned in the Second Schedule is a director of another corporation (not being an association registered under this Act, the Permanent Building Societies Act, 1967, or the Credit Union Act, 1969) the society shall not lend to another director of that corporation or to the spouse of such a director an amount that, if added to any indebtedness of that other director, or of his spouse, to the society at the time the loan to him is made, would exceed the prescribed amount.

(4)

Co-operation (Amendment).

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(4) For the purposes of this section, anything done by a proprietary company of which a director or other officer of a society, or his spouse, is a member shall be deemed to have been done by that director or other officer of the society, as the case may be.

(5) Notwithstanding anything in this section, the Co-operative Building Advisory Committee may, in a particular case, approve the making of a loan where, but for this subsection, the making thereof would be a contravention of subsection (2) or (3) and, where such an approval is given, the making of the loan is not such a contravention.

(6) Where a loan is made by a society in contravention of subsection (2) or (3)—

- (a) the society;
- (b) any officer who knowingly and wilfully authorises or permits the making of the loan;
- (c) in the case of a loan made in contravention of subsection (2) to a director or other officer—the person to whom the loan was made;
- (d) in the case of a loan made in contravention of subsection (2) to a person associated with a director or other officer—that director or other officer; and
- (e) in the case of a loan made to a director of another corporation or his spouse in contravention of subsection (3)—any director or other officer of the society who is a director of that other corporation,

are each guilty of an offence and liable to a penalty not exceeding \$500 unless, in the cases referred to in paragraphs (d) and (e), it is proved that the defendant used all due diligence to prevent the contravention.

(f)

Co-operation (Amendment).

- (f) by inserting in section 91 (4) (a) after the word "expenses" the words "of the hearing and such costs of the parties as he specifies".
- No. 3, 1974
Sec. 91.
(Disputes.)

7. Part V of the Principal Act is amended—

Amendment
of Part V
of Act No.
1, 1924.

- (a) by inserting after section 92B the following section :—
- Sec. 92c.

92c. (1) Subject to this section, the provisions of sections 367A, 367B and 367C and of sections 374A to 374G, both inclusive, of the Companies Act, 1961, apply to and in respect of a society, and its officers and former officers, in the same way as they apply to a company and its officers and former officers.

Certain
offences
under
Companies
Act, 1961,
to apply
equally in
respect of
society.

(2) For the purposes of subsection (1), the provisions referred to therein shall be construed as if—

- (a) a reference therein to a company were a reference to a society;
- (b) a reference therein to the Commission were a reference to the registrar;
- (c) the reference in section 374B to the provisions of section 161A or any corresponding previous enactment for the time being in force were a reference to the provisions of this Act relating to the keeping of accounts of a society;
- (d) paragraph (c) were omitted from—
- (i) the definition of "company to which this section applies" in section 374E (1);

(ii)

Co-operation (Amendment).

No. 3, 1974

(ii) the definition of "appropriate officer" in section 374E (1); and

(iii) the definition of "the relevant day" in section 374E (1); and

(e) the return referred to in paragraph (f) of the definition of "the relevant day" in section 374E (1) were a reference to a return under section 76 (2) of this Act.

Secs. 95A
and 95B.

(b) by inserting after section 95 the following sections :—

Appoint-
ment of
administra-
tor of
society.

95A. (1) Subject to this section, the registrar may, with the approval of the Minister, appoint an administrator to conduct the affairs of a non-terminating building society or a society mentioned in the Second Schedule and may revoke any such appointment.

(2) The registrar shall not appoint an administrator to conduct the affairs of a non-terminating building society unless he certifies as would be provided by sections 92 (3) and 92 (4) if section 92 were amended—

(a) by omitting from subsection (3) the words "In the case of a winding-up upon the certificate of the registrar, the society may be wound up if" and by inserting instead the words "An administrator may not be appointed under section 95A (1) unless";

(b) by omitting subsections (3) (c), (3) (d) and (3) (h); and

(c)

Co-operation (Amendment).

- (c) by omitting from subsection (3) (1) the words "the society should be wound up" and by inserting instead the words "an administrator should be appointed to conduct the affairs of the society". No. 3, 1974

(3) The registrar shall not appoint an administrator to conduct the affairs of a society mentioned in the Second Schedule unless he certifies—

- (a) that the society has suspended business for a period of more than six months;
- (b) that the society has, wilfully and after notice from the registrar, failed to comply with the provisions of this Act or the regulations or the rules of the society;
- (c) that there are, and have been for the period of one month that last preceded the date of the registrar's certificate, insufficient directors of the society to constitute a quorum as provided by the rules of the society; or
- (d) that, following an inquiry pursuant to the provisions of this Act into the affairs of the society or the working and financial condition of the society, it is in the interests of members or creditors of the society that an administrator should be appointed to conduct the affairs of the society,

and, except in the case referred to in paragraph (a), he has obtained the prior consent of the Governor to issue the certificate.

(4)

Co-operation (Amendment).

No. 3, 1974

(4) Upon the appointment of an administrator of a society—

- (a) the directors of the society cease to hold office;
- (b) all contracts of employment with the society are terminated; and
- (c) all contracts for the provision of secretarial or administrative services for the society are terminated.

(5) An administrator of a society has the powers, authorities, duties and functions of the board of the society and, except as provided by subsection (6), no appointment of a director of the society may be made while the administrator is in office.

(6) Before revoking the appointment of an administrator of a society, the registrar shall, except in the case of a revocation under section 95B (2)—

- (a) ensure that directors of the society have been elected in accordance with the rules of the society at a meeting convened by the administrator in accordance with those rules; or
- (b) appoint directors of the society.

(7) Directors elected under subsection (6) (a) or appointed under subsection (6) (b)—

- (a) take office upon revocation of the appointment of the administrator; and
- (b) in the case of appointed directors, hold office until the annual general meeting of the society that next succeeds revocation of that appointment.

(8)

Co-operation (Amendment).

(8) The expenses of and incidental to the conduct of the affairs of a society by an administrator are payable from the funds of the society. No. 3, 1974

(9) The remuneration of an administrator who is not a servant of the Crown is an expense referred to in subsection (8) and shall be fixed by the registrar.

(10) Where an administrator appointed under this section is a servant of the Crown, the reimbursement of the Crown in an amount certified by the registrar in respect of the remuneration of its servant is an expense referred to in subsection (8) and is recoverable as a debt due to the Crown.

(11) An administrator of a society is not liable for any loss sustained by the society during his term of office unless the loss was due to his wilful misconduct or gross negligence or to his wilful failure to comply with the provisions of this Act or the regulations or the rules of the society.

(12) The registrar is not liable for any loss sustained by a society during the term of office of an administrator, whether or not the administrator is so liable.

95B. (1) Where an administrator of a society is appointed, a majority of the directors who ceased to hold office upon the appointment of the administrator may, not later than fourteen days after the appointment, make representations to the Co-operative Building Advisory Committee with respect to the appointment and, where any such representations are so made, the Co-operative Building Advisory Committee shall report thereon to the Minister. Co-operative Building Advisory Committee may make certain report to Minister.

(2)

Co-operation (Amendment).

No. 3, 1973

(2) The registrar shall, if the Minister so directs after considering a report under subsection (1) with respect to a society, revoke the appointment of an administrator of the society, and a director who held office immediately before the appointment of the administrator resumes that office upon revocation of the appointment.

Amendment
of Part VI
of Act No.
1, 1924.

Sec. 112A.

8. Part VI of the Principal Act is amended—

- (a) by inserting after section 112 the following section :—

Society
to report
imposition
of penalty.

112A. Where a penalty is imposed on a society under this Act, the society shall, not later than fifteen months after the imposition of the penalty, give each member written notice of the imposition of the penalty, the amount thereof and the nature of the offence.

Sec. 114A.
(Co-operative building
advisory
committee.)

- (b) by inserting in section 114A (3) (d) after the word "Minister" the words "or as may be prescribed";

Sec. 114c.
(Co-operative
advisory
committees.)

- (c) by omitting from section 114c (1) the matter ", (g)".

Amendment
of Part VIII
of Act No. 1,
1924.

9. Part VIII of the Principal Act is amended—

Sec. 118B.
(Power to
suspend
raising of
funds.)

- (a) by inserting at the end of section 118B the following subsections :—

(5) The Minister may, at any time, direct that subsection (2) shall cease to apply to the society and that subsection shall cease to apply accordingly.

(6)

Co-operation (Amendment).

(6) A society that contravenes subsection (2) No. 3, 1974 is guilty of an offence and liable to a penalty not exceeding \$600; and an officer of the society who knowingly and wilfully authorises or permits a contravention of subsection (2) is liable on conviction on indictment to a penalty not exceeding \$600 or to a term of imprisonment not exceeding two years or to both or, on summary conviction, to a penalty not exceeding \$400 or to a term of imprisonment not exceeding three months or to both.

(b) by inserting in section 120 (a) after the word Sec. 120. "society" the words "any notice given by a society (Inspection of documents.) under section 84AB (9) and any return made to the registrar under section 75C".

10. An order made under section 47 (14A) or 66 (5A) Transitional provision. of the Principal Act and in force immediately before the commencement of this Act shall be deemed to have been made under that section of the Principal Act, as amended by this Act.

11. The Principal Act is further amended by omitting the Further amendment of Act No. 1, 1924. Third Schedule and by inserting instead the following Third Schedule. Schedule :—

THIRD SCHEDULE.

Sec. 41A.*Provisions applicable to Societies mentioned in Second Schedule.*

Sections 16 (1C), 16A, 16B, 16C, 16D, 17AB, 17AC, 17B, 17C, 18, 18A, 18E, 18F, 18G, 41A, 43, 43A, 46 (7), 46 (7AA), 46 (7A), 46 (7B), 46 (7C), 47 (5B), 47 (5C), 47 (5D), 47 (14A), 47 (14B), 47 (17), 47B, 48, 52, 54, 59, 65 (3), 66 (sections 66 (6), 66 (7A), 66 (7B) and 66 (13) excepted), 66A, 66C, 68 (1A), 68 (1B), 68 (1C), 68 (3A), 69 (1A), 69 (1B), 69A, 69B, 69C, 69D, 72 (2A), 74, 75, 75A, 75B, 75C, 76, 78, 80, 84 (9A), 84 (11), 84 (11A), 84 (13), 84AA, 84AB, 84AC, 88 (3), 88A, 88AA, 89, 91, 95A, 95B, 101, 102, 108, 109A, 110, 111, 112, 112A, 113, 116, 117, 118, 118B, 120, 121, 122 and 124.

INDUSTRIAL