



ANALYSIS

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1993, No. 111

An Act to amend the Building Societies Act 1965

[28 September 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Building Societies Amendment Act 1993, and shall be read together with and deemed part of the Building Societies Act 1965 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1994.

2. Building society may approve scheme for conversion of society into company under Companies Act 1993—Section 113A of the principal Act (as inserted by section 26 of the Building Societies Amendment Act 1987) is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) A society may, by special resolution, approve a scheme for conversion of the society into a company having limited liability under the Companies Act 1993.

“(2) Every scheme shall—

“(a) State the name of the proposed company:

“(b) State the number of shares of the proposed company:

- “(c) Have annexed to it the constitution of the proposed company, if it is proposed to have one:
- “(d) Specify the persons or classes of persons who will be shareholders of the proposed company:
- “(e) Specify, in the case of persons or classes of persons who are members of the society and who will be shareholders of the proposed company, by reference to the interests of those persons or classes of persons in the capital of the society, the entitlements of those persons or classes of persons to shares in the proposed company:
- “(f) Specify, in the case of persons or classes of persons who are members of the society and who will not be shareholders of the proposed company, the rights and liabilities of such persons or classes of persons:
- “(g) Contain such other matters as the society thinks appropriate.”

3. Registrar of Companies to register society as company on receipt of certain documents—The principal Act is hereby amended by repealing section 113D (as inserted by section 26 of the Building Societies Amendment Act 1987), and substituting the following section:

“113D. (1) As soon as reasonably practicable after the registration, pursuant to section 113c (4) of this Act, of a copy of the special resolution approving the scheme for the conversion of the society into a company, the society shall deliver to the Registrar of Companies the following documents and fee:

- “(a) A copy of the special resolution certified under the hand of the Registrar of Building Societies as having been registered under section 113c (4) of this Act:
- “(b) The constitution of the proposed company, if it is proposed to have one, annexed to the scheme approved by the society:
- “(c) Confirmation from the Registrar of Companies that the name of the proposed company has been reserved pursuant to section 22 of the Companies Act 1993:
- “(d) The address of the registered office and the address for service of the proposed company:
- “(e) The written consents to act as directors as required by section 152 of the Companies Act 1993 of all persons to be appointed directors of the proposed company:

“(f) The certificate of incorporation of the society issued under this Act:

“(g) Such fee as is payable for the registration of the company.

“(2) The Registrar of Companies, on being satisfied that the documents delivered under subsection (1) of this section are in accordance with that subsection, shall retain and register them and issue a certificate of incorporation for the company.

“(3) The certificate of incorporation shall be conclusive evidence that the requirements of this section have been complied with and that the society was, on the date shown in the certificate, duly registered as a company under the Companies Act 1993.

“(4) From the commencement of the date shown in the certificate of incorporation, the society shall cease to be incorporated under this Act and shall be a company incorporated under Part II of the Companies Act 1993 and that Act shall apply to it accordingly.

“(5) The Registrar shall forthwith publish notice of the registration of the society as a company pursuant to this section in the *Gazette*.

“(6) Upon the registration of a society as a company,—

“(a) All persons who are to be shareholders of the company in accordance with the terms of the scheme for conversion shall be shareholders in the company; and

“(b) The shares in the company to which all such persons are entitled in accordance with the scheme for conversion shall be deemed to be issued to such persons; and

“(c) An entry shall be made in the share register of the company in respect of each such person showing—

“(i) The name of that person:

“(ii) The address of that person to which notices and other documents are to be sent:

“(iii) The class of share and the number of the shares in the company to be held by that person calculated in accordance with the terms of the scheme for conversion.

“(7) Where any shares are, pursuant to subsection (6) of this section, deemed to have been issued to shareholders of the company, the company shall, as soon as practicable, deliver to the Registrar of Companies—

“(a) A list, verified by the statutory declaration of a director, showing—

“(i) The number of shares issued:

“(ii) The names, addresses, and descriptions of the shareholders:

“(iii) The amount credited as paid up on each share issued:

“(iv) The consideration for which the shares were issued:

“(b) A statutory declaration by a director of the company to the effect that the consideration provided is not less than the amount by which the shares have been paid up otherwise than in cash and describing the consideration for the issue of the shares (or, where the effect of the issue of the shares is to satisfy the whole or part of a liability of the company, for the liability) in sufficient detail to identify it and stating an estimate of its value and how that value was assessed.

“(8) Notwithstanding anything contained in subsection (7) (a) of this section or section 87 of the Companies Act 1993, no company into which a society has become converted pursuant to this Part of this Act shall be required—

“(a) To show on the list required to be delivered to the Registrar of Companies by subsection (7) (a) of this section; or

“(b) To enter in its share register—
the description of any person who immediately before the conversion date was a member of the society if the register of members of the society did not contain a description of that person.”

4. Liability of members of company—Section 113G of the principal Act (as inserted by section 26 of the Building Societies Amendment Act 1987) is hereby amended by omitting the words “wound up”, and substituting the words “put into liquidation”.

5. Prohibition on issue of terminating or bonus balloting shares in company to which society converts—Section 113H of the principal Act (as inserted by section 26 of the Building Societies Amendment Act 1987) is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Nothing in subsection (1) of this section prevents a company into which a society has become converted from issuing any shares that,—

- “(a) If the company is incorporated under the Companies Act 1955, a company incorporated under that Act is authorised or permitted to issue; or
- “(b) If the company is incorporated under the Companies Act 1993, a company incorporated under that Act is authorised or permitted to issue.”

6. Preservation of rights of terminating shareholders—Section 113I (2) of the principal Act (as inserted by section 26 of the Building Societies Amendment Act 1987) is hereby amended by omitting from paragraph (a) and paragraph (b) the word “general”.

7. Terms and conditions of bonus balloting securities not to be substantially different from terms and conditions of bonus balloting shares—Section 113J (2) of the principal Act (as inserted by section 26 of the Building Societies Amendment Act 1987) is hereby amended by omitting from paragraph (a) and paragraph (b) the word “general”.

8. New sections substituted—The principal Act is hereby amended by repealing sections 118 to 120, and substituting the following sections:

“118. Dissolution by appointment of liquidator—(1) Nothing in the foregoing provisions of this Part of this Act limits or affects this section or any other enactment that provides for the dissolution or liquidation of societies.

“(2) A society may be put into liquidation by the appointment by the Court as liquidator of a named person or an Official Assignee for a named district.

“(3) An application for the appointment of a liquidator under subsection (2) of this section may be made by—

“(a) A member authorised by special resolution to make the application:

“(b) A judgment creditor for a sum exceeding \$100:

“(c) The Registrar in the exercise of any power conferred by this Act.

“(4) Subject to the provisions of this Act and of any regulations made under this Act, a society shall be deemed for the purposes of any liquidation under this section to be a company, and the provisions of Parts XVI and XVII of the Companies Act 1993 relating to the liquidation of companies, so far as they are applicable and with the necessary modifications, shall apply accordingly.

“(5) Where in the exercise of any power conferred by this Act the Registrar makes an application under this section, the Court may, if it thinks fit, having regard to the interests of those members of the society (if any) who were not responsible for the relevant default, and to all the other circumstances, refuse to make an order appointing a liquidator, and may make its refusal subject to any conditions.

“(6) The conditions that the Court may impose under subsection (5) of this section may include conditions for ensuring—

“(a) That the society be dissolved under section 114 or section 115 of this Act; or

“(b) That the society unite under section 32 of this Act with another society, or that it transfer its engagements to another society under section 33 of this Act—
and may also include conditions for ensuring that the relevant default be made good, and that the costs of the proceedings on the application be met by the person or persons responsible for that default.

“(7) In this section, the expression ‘the relevant default’, in relation to an application for the appointment of a liquidator, means the default that was the occasion of the application being made.

“119. Liability of members on dissolution or liquidation—Where a society is being dissolved or is in liquidation, a member to whom an advance has been made under a mortgage or other security, or under the rules of the society, shall not be liable to pay the amount payable thereunder except at the time or times and subject to the conditions set out in the mortgage or other security, or in the rules, as the case may be.

“120. Notice of dissolution or liquidation—(1) Notice of the commencement and of the termination of the dissolution or liquidation of a society shall be sent, in duplicate, to the Registrar, and one copy shall be registered.

“(2) The Registrar shall send the remaining copy to the appropriate District Registrar of Companies.

“(3) If a society fails to send any such notice, the society, and every officer of the society who is in default, commits an offence against this Act.”

9. Transitional provisions applying to winding up of societies—(1) Nothing in section 8 of this Act applies to or affects the winding up of a society commenced before the

commencement of this Act or anything done by or in relation to a society under Part VI of the Companies Act 1955 before the commencement of this Act, and sections 118, 119, and 120 of the principal Act and Part VI of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply in relation thereto as if this Act had not been passed.

(2) In the liquidation of a society under Part XVI of the Companies Act 1993, nothing in any of sections 292 to 299 of that Act shall apply in relation to any transaction entered into by a society, or any matter that arose, before the commencement of this Act, but sections 309, 310, 311, 311A, 311B, and 311c of the Companies Act 1955, as in force before the commencement of this Act, shall continue to apply in respect of that transaction or matter as if this Act had not been passed.

10. Second Schedule amended—(1) Clause 5(1) of the Second Schedule to the principal Act is hereby amended by omitting the words “present a petition for the winding up of the society under the Companies Act 1955”, and substituting the words “apply to the Court for the appointment of a liquidator under Part XVI of the Companies Act 1993”.

(2) Clause 5 of the Second Schedule to the principal Act is hereby amended by repealing subclause (2), and substituting the following subclause:

“(2) Not less than one month before making the application, the Registrar shall send to the society notice of his or her decision, and may, if he or she thinks fit, afford to the society an opportunity of submitting, as an alternative to the liquidation of the society under the Companies Act 1993, proposals for—

“(a) Dissolving the society in one of the ways mentioned in sections 114 and 115 of this Act; or

“(b) Uniting the society under section 32 of this Act with another society, or transferring its engagements to another society under section 33 of this Act;—

and the Registrar may, having regard to the proposals, postpone his or her decision to make the application.”

(3) Clause 6(3) of the Second Schedule to the principal Act is hereby amended by omitting the words “present a petition for the winding up under the Companies Act 1955”, and substituting the words “apply to the Court for the appointment of a liquidator under the Companies Act 1993”.