

Queensland



*Financial Institutions (Queensland) Act 1992*

# FINANCIAL INSTITUTIONS REGULATIONS 1992

**Reprinted as in force on 22 September 1994  
(includes amendments up to SL No. 304 of 1994)**

**Reprint No. 3**

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# Information about this reprint

These regulations are reprinted as at 22 September 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use standard punctuation consistent with current legislative drafting practice (s 27)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A Table of previous reprints is included in the Endnotes.

**Also see Endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**



# FINANCIAL INSTITUTIONS REGULATIONS 1992

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# FINANCIAL INSTITUTIONS REGULATIONS 1992

[as amended by all amendments that commenced on or before 22 September 1994<sup>2</sup>]

## Short title

1. These regulations may be cited as the *Financial Institutions Regulations 1992*<sup>3–5</sup>.

## Commencement

2. These regulations commence on 1 July 1992.

## Definitions

3. In these regulations—

“**building society**” includes—

- (a) a body incorporated as a building society under the law of a participating State before the commencement of the financial institutions legislation; and
- (b) a foreign society authorised under the law of a participating State to operate as a building society.

“**credit union**” includes—

- (a) a body incorporated as a credit union or a credit society under the law of a participating State before the commencement of the financial institutions legislation; and
- (b) a foreign society authorised under the law of a participating State to operate as a credit union.

“**home State**” of a society means the State of its registration and incorporation.

**“jurisdiction”** means a State to which these regulations apply either by their own force or by force of a law applying them to that State.

### **Prescribed forms**

**3A.(1)** The prescribed forms for the purposes of the Code are the forms approved by AFIC.

(2) A person may ask AFIC or the SSA for an approved form.

(3) AFIC or the SSA must comply promptly with the request.

### **Application of Corporations Law—s 65**

**4.(1)** Every provision of the Corporations Law that applied of its own force to a building society immediately before the commencement of the financial institutions legislation continues to apply to the same extent and in the same way.

(2) Every provision of the Corporations Law that applied of its own force to a credit union immediately before the commencement of the financial institutions legislation continues to apply to the same extent and in the same way.

(3) For the purposes of this section, a provision of the Corporations Law is taken to have applied to a building society or a credit union or the securities of a building society or credit union—

- (a) whether the provision applied to—
  - (i) the building society or credit union generally or a particular class of its operations or activities; or
  - (ii) the securities of the building society or credit union generally or a particular class of securities; and
- (b) whether or not the provision applies only to operations of the building society or credit union outside its home State; and
- (c) whether or not the provision applied only to conduct in relation to securities of the building society or credit union outside its home State.

**Classes of documents available for inspection—s 71(3)**

**4A.(1)** The following classes of documents are prescribed for the purposes of section 71(3)(a)(ii) of the Code—

- (a) documents lodged with, created by or otherwise held by the SSA under sections 90(1) and (1B), 147(3), 175(1), (3) and (5), 202(1)(a), 203(1)(b), 255(8), 258(7A), 286(3) and (4), 364(2)(a), (b) and (c), 366, 367(1), 368(1) and 434 of the Code; and
- (b) documents lodged with, created by or otherwise held by the SSA under—
  - (i) section 26(1) and (2); and
  - (ii) Schedule 2 (Charges)—sections 263, 264, 268(1)(a) and (2) and 269(2); and
  - (iii) Schedule 3 (Arrangements and reconstructions)—sections 411(9)(a) (applying sections 427(2) and (4)(a) and 432(1)), 411(10), 412(6), 413(3) and 415(1); and
  - (iv) Schedule 4 (Receivers and managers)—sections 427(1)(a), (2), (3) and (4)(a), 429(2)(c)(i), (4) and (5) and 432(1); and
  - (v) Schedule 5 (Official management)—sections 436(15), 439(2)(a)(i) and (7), 441(1) and (2)(a), 443(7) and (8), 445(4), 448(11), 455(1), 456(8)(c), (12), (13), (14) and (23) and 458(4) and (5); and
- (c) documents lodged with, created by or otherwise held by the SSA under the following provisions of Parts 5.4, 5.5 and 5.6 of the Corporations Law as those Parts apply under section 342 of the Code—sections 470(1) and 2(a), 474(3), 475(7), 481(5), 482(5), 491(2)(a), 494(3)(b), 496(7), 497(2)(c) and (7), 509(3), (4) and (7), 537, 539(1), 571(2) and 574(4); and
- (d) the Register of Charges mentioned in Schedule 2 at section 265(1); and
- (e) the document and office copy mentioned in Schedule 5 at section 455(2).

**(2)** This section is taken to have commenced on 1 July 1992.

**Guarantees—s 74**

**5.(1)** A guarantee executed by the SSA under section 74 of the Code is subject to the following prescribed conditions—

- (a) the guarantee is not enforceable against the SSA until the creditor has exhausted all other rights and remedies for the recovery of the amount secured by the guarantee;
- (b) an assignment of, or charge on, the rights conferred by the guarantee is not effective against the SSA unless made with the written consent of the SSA.

**(2)** A liability arising under a guarantee executed by the SSA under section 74 of the Code is to be satisfied out of the Credit Unions Contingency Fund.

**(3)** The SSA may not enter into a guarantee under section 74 of the Code if the guarantee would raise the aggregate of the SSA's contingent liabilities under such guarantees to an amount that (when allowance is made for other present and contingent liabilities) exceeds the amount standing to the credit of the Credit Unions Contingency Fund.

**Payment to persons required to attend or produce documents—s 76**

**5A.(1)** This section specifies the allowances and expenses to be allowed to a person required to attend under section 76 of the Code.

**(2)** The person must be paid—

- (a) if the person is remunerated in the person's occupation by wages, salary or fees—an amount equal to the amount of wages, salary or fees not paid to the person because of the person's attendance; or
- (b) in any other case—an amount, of not less than \$46 or more than \$76 for each day of attendance, that the SSA considers to be reasonable compensation for the person's loss of income because of the person's attendance.

**(3)** The person must also be reimbursed for any amount incurred by the person, of not more than an amount the SSA considers to be reasonable in each case—

- (a) for transport between the person's usual place of residence and the place of attendance; and
- (b) if the person is required to be absent overnight from the person's usual place of residence because of the attendance—for meals and accommodation.

**Support levy—s 99**

**6.** A support levy under section 99(1) of the Code must not exceed 0.5 % of the aggregate amount of the credit union's share capital (if any) raised by the issue of withdrawable shares and the amount held by it on deposit, as at a day specified by the SSA for the purposes of the levy.

**Contingency fund agreements—maximum number of credit unions—s 105B**

**6A.** The SSA may enter into a contingency fund agreement only if the number of credit unions under the financial institutions legislation of the transferring State is not more than 8.

**Primary objects of building societies—s 110(1)(b)**

**6B.(1)** In this section—

**“residential loan”** means financial accommodation provided to a person—

- (a) for the purchase of a residential building or for residential development; or
- (b) for any other purpose, if secured over the person's principal place of residence.

**(2)** The primary objects of a building society include applying its funds for any of the following purposes—

- (a) providing financial accommodation to a member as mentioned in

the definition “**residential loan**”, paragraph (b)<sup>1</sup>;

- (b) refinancing or consolidating existing residential loans provided by the building society to a member;
- (c) refinancing a residential loan provided to a member by another entity;
- (d) acquiring, from another entity, the security for a residential loan provided to a member by the entity, and the entity’s rights, entitlements, duties and obligations under the terms of the loan.

### **Separate account of building society’s assets acquired in pursuit of its primary objects—s 112(6)**

**7.(1)** The separate account to be kept by a building society of its assets derived from financial accommodation provided in pursuance of its primary objects must show the value of assets derived from provision of financial accommodation to members for the purchase of residential buildings or for residential development, differentiating between owner-occupiers and investors.

**(2)** The value must also be shown as a percentage of the value of the total assets of the society.

### **Separate accounts to be kept by credit unions—s 113(7)**

**8.(1)** A credit union must keep separate accounts of the value of assets derived from—

- (a) financial accommodation provided to members for commercial purposes; and
- (b) financial accommodation provided to members for purposes other than commercial purposes.

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<sup>1</sup> The primary objects of a building society also include applying its funds in providing financial accommodation to a member in a way mentioned in paragraph (a) of the definition “**residential loan**”. This is provided in section 110 of the Code.



(2) Each value must also be shown as a percentage of the value of the total assets of the credit union.

### **Registration of societies—s 115**

**9.(1)** An application for registration of a society must—

- (a) be addressed to the SSA;
- (b) state the name under which the society is to be registered;
- (c) state whether the society is to operate as a building society or a credit union;
- (d) *be made within 2 months after the formation meeting at which the first directors of the society were elected; and*
- (e) *be accompanied by—*
  - (i) *a statutory declaration by the person presiding at the formation meeting and the secretary of the meeting stating that the requirements of section 114 (Formation of societies) have been complied with; and*
  - (ii) *a copy of the statement presented to the meeting, signed by the person presiding and the secretary; and*
  - (iii) *2 copies of the proposed rules of the society, certified by the person presiding and the secretary to be the rules approved at the meeting; and*
  - (iv) *a list containing the full name, date and place of birth, residential address and business occupation of each director; and*
  - (v) *a list containing the full name, address and occupation of each of 25 or more adults who attended the meeting and applied for membership and shares; and*
  - (vi) *written estimates of all income and expenditure and capital flows over each of the first 3 years of operation of the society; and*
  - (vii) *such evidence as the SSA requires—*

- (A) *that the society is eligible for registration; and*
- (B) *that the society, if registered, will be able to comply with the financial institutions legislation, all applicable standards and applicable character requirements; and*
- (C) *that the society, if registered, will be able to carry out its objects successfully.*<sup>2</sup>

(2) An application must contain the name and address of a person to whom communications relating to the application may be sent.

(3) An application must be signed by the persons elected at the formation meeting to be the first directors of the society.

(4) An application must be accompanied by a fee of \$5 000.

### **Acquisition of shares in services corporation—s 119**

**10.** The limitation imposed by section 119(3) of the Code on the amount that may be applied in subscribing for or otherwise acquiring shares in a services corporation is—

- (a) \$2 000; or
- (b) 1% of the value of the society's assets as at the end of the last financial year (as shown in the society's balance sheet for that financial year) less the aggregate amount previously applied in subscribing for or otherwise acquiring shares in a service corporation;

whichever is the greater.

### **Control of certain financial transactions—s 120**

**11.** For the purposes of the definition “**approved financial contracts**” in section 120(1) of the Code, a prescribed bank is—

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<sup>2</sup> The italicised material is taken from the Code and is included for the sake of completeness.

- (a) a bank as defined by section 5 of the *Banking Act 1959* (Cwlth); or
- (b) a bank constituted under a law of a State.

**Maximum account-keeping fee for amounts in a suspense account—s 138A(5)**

**11A.** The maximum amount a society may charge for keeping an amount for a person in a suspense account is \$10 a year.

**Returns on allotment of shares—s 175**

**12.(1)** A return under section 175 of the Code must—

- (a) be in writing signed by a director, secretary or principal executive officer of the building society;
- (b) state—
  - (i) *the number and nominal values of the shares comprised in the allotment; and*
  - (ii) whether the shares are allotted as fully-paid or partly paid shares; and
  - (iii) *the amount (if any) paid or due and payable on the allotment of each share; and*
  - (iv) if the shares are not allotted for cash—the nature of the consideration for which the shares have been allotted; and
  - (v) *if the capital of the building society is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and*
  - (vi) *subject to subsection (2), the full name, or the surname and at least one given name and initials, and the address of each of the allottees and the number and class of shares allotted to the person; and*
  - (vii) if the shares are allotted pursuant to an application made before the registration of the building society—that fact.

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

(3) If the shares are allotted otherwise than in consideration of the payment of money and a statement is to be lodged with the return under section 175(5) of the Code, the statement must contain the following particulars—

- (a) if the allotment is made under a contract not reduced to writing—particulars of the terms of the contract;
- (b) if the allotment is made under the society's rules—particulars of the rules under which the allotment was made;
- (c) if the allotment is made in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders—particulars of the amount of the dividend and the date on which it was declared;
- (d) if the allotment is made under the application of money held by the building society in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled—particulars of the amount, source and application of the money.

### **Substantial shareholding and substantial shareholders—s 196**

13. Part 6.7 of the Corporations Law is modified in its application to a society so as to read as shown in Schedule 6.

### **Power of societies to obtain information—s 197**

14. Part 6.8 of the Corporations Law is modified in its application to a society so as to read as shown in Schedule 7.

### **Disclosure statement—s 203(1)**

15.(1) A disclosure statement must comply with the requirements applicable to a prospectus under Division 2 of Part 7.12 of the Corporations Law.

(2) Sections 1025, 1026 and 1027 of the Corporations Law apply to securities of a society or proposed society as if references to the Commission were references to the SSA.

(3) Division 5 of Part 7.12 of the Corporations Law (Prescribed interests) applies to a society as if references to the Commission were references to the SSA.

### **Documents acknowledging deposits or loans pursuant to offer to the public etc.—s 209**

16. Section 209(1) of the Code does not require a society to issue an acknowledgment of indebtedness if money is accepted on deposit or loan in circumstances where a disclosure statement was not required under section 202 of the Code.

### **Maximum fee for issue of a duplicate document—s 219(1)(a)**

16A. The maximum amount a building society may require a person to pay for the issue of a duplicate document of title to shares, debentures or prescribed interests is \$10.

### **Registration of charges—s 227**

17. Part 3.5 of the Corporation Law is modified in its application to a society so as to read as shown in Schedule 2.

### **Approval of charges—s 229**

18. The SSA's prior approval to the creation of a charge on property of a society is not required under section 229 of the Code if the charge does not encumber prime liquid assets of the society.

### **Registers—s 257**

19.(1) A society is required to keep the following registers—

- (a) a register of loans made to officers and employees of the society;

- (b) a register of loans made to members of the society and of securities taken in respect of those loans;
- (c) in the case of a credit union—a register of commercial loans made by the credit union and of securities taken in respect of those loans;
- (d) a register of investments made by the society (except investments in a subsidiary or a body corporate that is an associate of the society) and of securities related to any such investments;
- (e) a register of investments made by the society in subsidiaries and in bodies corporate that are associates of the society and of securities related to any such investments;
- (f) a register of guarantees given by the society;
- (g) a register of the loans raised by the society, the debentures or other securities issued by the society in respect of those loans and the holders of those debentures and other securities;
- (h) a register of deposits received by the society;
- (i) a register of bonds, bills of exchange and promissory notes issued by the society;
- (j) a register of letters of credit issued by the society;
- (k) a register of prescribed interests issued by the society.

(2) The registers must be kept in accordance with any applicable standards.

### **Register of members—s 259**

**20.** The register of members to be kept by a society under section 259 of the Code must contain the following information in relation to each member—<sup>3</sup>

- (a) *the name and address of the member;*
- (b) *the date of admission to membership;*

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<sup>3</sup> Paragraphs (a) and (b) reproduce information required by s 258(1)(a) and (b) of the Code and are included here for the sake of completeness.

- (c) the number of shares (if any) allotted to the member, the date of allotment, the nominal value of the shares and the amount paid up on the shares;
- (d) if applicable—the date of termination of membership and the circumstances of termination.

**Register of holders of permanent shares—s 260**

**21.** The register of holders of permanent shares to be kept by a building society under section 260 of the Code must contain the following information in relation to each holder—<sup>4</sup>

- (a) *the name and address of each holder;*
- (b) *the date of every allotment of permanent shares to the holder and the number of permanent shares comprised in each allotment;*
- (c) *the date of the entry of a transfer or transmission of permanent shares to the holder and the number of permanent shares comprised in each transfer or transmission;*
- (d) the nominal value of the shares and the amount paid up on the shares;
- (e) if the shares were not allotted for a monetary consideration—the nature of the consideration;
- (f) the number of the certificate issued in respect of the shares.

**Inspection—s 263(4)**

**22.** A member of a society is not entitled to a copy of a register, or part of a register, under section 263(4) of the Code, except the register of members or the register of holders of permanent shares.

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<sup>4</sup> Paragraphs (a), (b) and (c) reproduce requirements imposed by s.260(1) of the Code and are included here for the sake of completeness.

**Requirements applying to accounts and group accounts—s 272**

**23.** The prescribed requirements with which accounts and group accounts must comply are those imposed by standard under section 28 of the AFIC Code.

**Removal and resignation of auditors—s 281**

**24.** An application for the SSA's consent to the resignation of an auditor, or a notice of the retirement, withdrawal or removal of an auditor must contain the following information—

- (a) a statement of the reasons for the proposed resignation, or the retirement, withdrawal or removal of the auditor;
- (b) a statement of any conflict or disagreement between the society and the auditor affecting the scope of the audit or the role of the auditor;
- (c) a statement of any matter on which the auditor would, if the auditor had remained in office, have commented adversely;
- (d) a statement of any proposal, known to the person giving the notice, for replacement of the auditor.

**Final audit on merger, etc.—s 286**

**25.(1)** Subject to subsection (2), the prescribed statements and information to be included in an auditor's report under section 286(1) of the Code are those set out in section 284 of the Code.

**(2)** For the purposes of this section, references in section 284 of the Code to the end of a financial year are to be construed as if they were references to the date of dissolution of the society or the date of its conversion to a company.

**Returns—s 290**

**26.(1)** A society must, in each year, on or before the date of its annual meeting, lodge with the SSA a return containing the information required by the applicable standard.



(2) The annual return must be accompanied by the accounts, reports and statement to be laid before the annual general meeting under section 276 of the Code.

(3) A society must lodge with the SSA such further returns as may be required under any applicable standard.

### **Proposal to convert by building society to be approved by members—s 320**

27. The requirements for a postal ballot under section 320 of the Code are as set out in Schedule 1.

### **Schemes of arrangement and reconstruction—s 337**

28. Part 5.1 of the Corporations Law is modified in its application to a society so as to read as shown in Schedule 3.

### **Receivers and managers—s 338**

29. Part 5.2 of the Corporations Law is modified in its application to a society so as to read as shown in Schedule 4.

### **Official management—s 339**

30. Part 5.3 of the Corporations Law is modified in its application to a society so as to read as shown in Schedule 5.

### **Registration of foreign society—s 364**

31.(1) An application for registration as a foreign society—

- (a) must be made in writing to the SSA; and
- (b) must be accompanied by—
  - (i) a certificate, not more than 2 months old, of the SSA of the participating State in which the society is incorporated stating that the society is complying with all applicable standards under the financial institutions legislation of that State; and

- (ii) any documents given to the society by the SSA of the participating State under the provision of the financial institutions legislation of the participating State that corresponds with section 369(3) of the Code; and
- (iii) a statement, verified by statutory declaration made by a director or the secretary of the applicant society, setting out—
  - (A) the full name and address of each person who will act as agent of the society in this State; and
  - (B) the address of the proposed registered office of the society in this State; and
  - (C) a copy of an instrument appointing a person resident in this State (other than a body corporate incorporated outside this State) as a person on whom all notices and legal process may be served on behalf of the society.

(2) If the SSA registers a society as a foreign society, the SSA must issue a certificate of registration.

### **Application of Code to foreign societies—s 365**

**32.** The following provisions of the Code apply to a foreign society under section 365 of the Code—

- (a) section 50 and 51 (Service); and
- (b) section 65 (Application of Corporations Law); and
- (c) section 145 (Publication of name); and
- (d) section 388 (Compliance with requirement to give information); and
- (e) section 396 (False or misleading information).

### **SSA to be notified of certain changes—s 366**

**33.** When a foreign society lodges with the SSA particulars of an alteration or change under section 366 of the Code, the particulars must be accompanied by the following documents—

- (a) in the case of a change of name resulting in the issue of a new or amended certificate of incorporation in the society's home State—a certified copy of the new or amended certificate;
- (b) in the case of an alteration or change affecting the rules or constitution of the society—a certified copy of the new or amended rules or constitution.

### **Society proposing to register as a foreign society—s 369**

**34.** If the SSA issues a certificate under section 369 of the Code, it must also give to the applicant society the following documents—

- (a) a certified copy of the society's certificate of incorporation;
- (b) a certified copy of the society's rules;
- (c) a certified copy of the last audited balance sheet of the society lodged with the SSA;
- (d) a list containing the full name, date and place of birth, occupation, and residential address of each director of the society.

### **Registration of associations—s 372**

**35.(1)** An application for the registration of a body as an association—

- (a) must be made in writing to the SSA under the common seals of the applicant financial institutions; and
- (b) must state the names, addresses and occupations of the persons who are to become the first directors of the association; and
- (c) must state the name of the proposed association; and
- (d) must state the objects of the association and the reasons why the applicant financial institutions seek registration of the association; and
- (e) must be accompanied by—
  - (i) the proposed rules of the association; and
  - (ii) a statutory declaration by a proposed director of the association to the effect that the formation to the association

and its proposed rules have been approved by the members of the applicant financial institutions; and

- (iii) must be accompanied by details of the proposed share capital of the association and the number of shares to be allotted to the applicant financial institutions.

(2) An application must be accompanied by a fee of \$2 000.

### **Application of Code to associations—s 378**

**36.** The following provisions of the Code apply to an association, under section 378 of the Code, as if the association were a society—

- (a) Part 2 (Functions and Powers of SSA), except Subdivisions 6 and 7 of Division 2;
- (b) sections 120 and 121 (Control of certain transactions);
- (c) Part 4, Division 3 (Rules);
- (d) sections 131, 134, 135, 136 and 139 (Membership);
- (e) Part 4, Division 5 (Name and office);
- (f) Part 5, Division 9 (Registration of charges);
- (g) Part 6, Divisions 4 and 5 (Accounts and audit);
- (h) Part 7, Divisions 1 and 3 (Mergers and transfers of engagements);
- (i) Part 9, Division 4 (Winding-up);
- (j) Part 13 (Review of decisions);
- (k) Part 14 (Miscellaneous);
- (l) Part 15 (Transitional).

### **Powers in relation to money of members who have died or become of unsound mind—s 412**

**37.(1)** The prescribed maximum for the purposes of section 411(2) of the Code is \$15 000.

(2) The prescribed maximum for the purposes of section 411(4) of the Code is \$15 000.

### **Forms**

**38.(1)** A form prescribed, or approved by the SSA, for the purposes of the Code must be completed in accordance with any directions and instructions contained in the form.

(2) The name of a person who signs a form must be written legibly under or alongside the signature of that person.

(3) If the space provided in a form is insufficient to contain all the required information—

- (a) the information must be set out in an annexure to the form; and
- (b) the annexure must have a distinguishing mark such as a letter or numeral; and
- (c) the space provided in the form must contain the statement ‘see annexure’ together with the distinguishing mark for the annexure, or words to similar effect.

(4) If a document is to be lodged by a financial body, the document must be signed by 2 directors or a director and the secretary of the financial body unless some other provision is made by the Code or these regulations.

(5) If a document that is required by or under the Code to be lodged with the SSA is signed by an agent, the original or a verified copy of the agent’s authority must be lodged with, endorsed on, or annexed to, the document.

### **Applied provisions**

**39.(1)** Provisions of the Corporations Law that are applied to societies by the financial institutions legislation are to be construed as if they formed part of the financial institutions legislation and words and expressions used in the applied provisions that are defined for the purposes of that legislation have, unless the contrary intention appears, the defined meanings.

(2) Without limiting subsection (1), a person who contravenes an applied provision incurs the same civil and criminal liabilities as if that person had contravened the corresponding provision of the Corporations Law.

## **Fees**

**40.** The following fees are prescribed for the purposes of the Code—

- (a) for the inspection of documents under section 71(3)(a) of the Code—\$3;
- (b) for a certified copy of, or extract from, a document under section 71(3)(b) of the Code—\$5 for the first page and \$0.50 for each additional page;
- (c) for an uncertified copy of any document that may be inspected under section 71(3)(a) of the Code—\$3 for the first page and \$0.30 for each additional page;
- (d) on lodging an application to the SSA to exercise a power conferred on the SSA because of the financial institutions legislation application of the Corporations Law—the corresponding fee specified in the Corporations Law;
- (e) on application to register an alteration of rules under sections 126 or 127 of the Code—\$26;
- (f) on lodging an application for merger or transfer of engagement under sections 293, 302 or 311 of the Code—\$132;
- (g) on lodgment of documents by or on behalf of a financial body relating to the registration of charges—
  - (i) on lodging a notice of charge or acquisition of property subject to a charge—\$53;
  - (ii) on lodging a notice of assignment or variation of registered charge—\$26;
  - (iii) on lodging a notice of satisfaction of, or release of property from, a registered charge—\$26;
- (h) on application for registration of a special resolution under section 255 of the Code—\$26;

- (i) on lodging a return of the members of a firm of auditors under section 278(5)(e) of the Code—\$13;
- (j) on lodging a notice of resignation, retirement, withdrawal or removal of an auditor under section 281 of the Code—\$13;
- (k) on lodging an annual return under section 290 of the Code—\$100;
- (l) on lodging a copy of a disclosure statement under section 203 of the Code—\$1 000;
- (m) on the late lodgment of a document (in addition to any lodgment fee provided for the lodging of the document)—
  - (i) if lodged within 1 month, after the prescribed time—\$15;
  - (ii) if lodged more than 1 month, but less than 3 months, after the prescribed time—\$46;
  - (iii) if lodged more than 3 months after the prescribed time—\$81;
- (n) for the production by the SSA, under a subpoena, of a document held by it in relation to a financial body or registered foreign society—\$23;
- (o) on lodging an application or request to the SSA to exercise any power, or to do any act, that the SSA is authorised or required to exercise or do on application or request, and for which no other fee is prescribed—\$15;
- (p) for a certificate issued by the SSA other than a certificate of incorporation—\$3.

**Transitional provision—name of society**

**40A.(1)** If, immediately before 1 July 1992, a continuing society did not include the word ‘Limited’ or the abbreviation ‘Ltd.’ at the end of its name, then, subject to this section, its registered name need not include that word or abbreviation at the end of its name.

**(2)** Subsection (1) applies only for the purposes of sections 140(3), 145(1) and 146 of the Code.

(3) Subsection (1) applies only for the purposes of sections 140(3) and 146 of the Code only until 31 December 1992.

(4) Subsection (1) applies for the purposes of section 145(1) of the Code only until—

(a) 31 December 1992; or

(b) if the SSA (on application by the society or of its own initiative) determines a later date (not later than 30 June 1993 in relation to the society—that later date.

(5) This section has effect despite any provision of the Code.



## **SCHEDULE 1**

### **POSTAL BALLOTS**

section 27

#### **PART 1—PRELIMINARY**

##### **Appointment of returning officer etc.**

**1.(1)** If a postal ballot is to be held under section 320 of the Code, the society—

- (a) must appoint a returning officer for the ballot; and
- (b) must supply the returning officer with a roll showing—
  - (i) the members of the society and the number of shares held by each member; and
  - (ii) if the shares are divided into different classes—the members who hold shares in each class and the number of shares of each class held by each member.

**(2)** The returning officer may, if necessary, appoint 1 or more persons to act as assistant returning officers or clerical assistants.

**(3)** A member of the society is not eligible to be appointed as a returning officer or assistant returning officer.

**(4)** The returning officer may delegate to an assistant returning officer any of the returning officer's functions under this Schedule.

##### **Notice of proposed postal ballot**

**2.(1)** As soon as practicable after being appointed as returning officer for a postal ballot, the returning officer must cause notice of the proposed ballot to be published in a newspaper circulating generally throughout the jurisdiction.

**SCHEDULE 1 (continued)**

**(2)** The notice must—

- (a) state that a postal ballot is to be held; and
- (b) state the proposal that is to be put to voters at the ballot; and
- (c) state the date for the close of the ballot; and
- (d) contain such further information as the SSA may require.

**Postponement of closing date**

**3.(1)** The returning officer may, by notice published in a newspaper circulating generally throughout the jurisdiction, postpone (for not more than 7 days on any 1 occasion) the date for the close of the ballot.

**(2)** The power conferred on the returning officer by this section may be exercised more than once in respect of a ballot.

**Printing of ballot papers**

**4.** The returning officer must ensure that a sufficient number of ballot papers is printed for the purposes of the ballot.

**Distribution of ballot papers**

**5.** As soon as practicable after the ballot papers have been printed, the returning officer must cause to be sent to each person on the roll, at the address specified in respect of the person in the roll—

- (a) a ballot paper that bears the initials of the returning officer or a deputy returning officer; and
- (b) an inner envelope that is marked with the words ‘Ballot paper only’; and
- (c) an outer envelope that bears the returning officer’s address for the purposes of the ballot and provision, on the back of the envelope, for the person’s name and address; and

**SCHEDULE 1 (continued)**

- (d) a certificate to be completed by the member certifying the member's membership and the number and class of shares held by the member; and
- (e) such information as the SSA may require.

**Replacement of ballot papers**

**6.(1)** If any person to whom a ballot paper has been sent satisfies the returning officer that the ballot paper has been spoilt, lost or destroyed, the returning officer may issue the person with a replacement ballot paper.

**(2)** The returning officer must keep a record of all replacement ballot papers so issued.

**PART 2—VOTING****Voting**

**7.** A person who wishes to vote in a postal ballot must—

- (a) record the vote on the ballot paper in accordance with the directions shown on it; and
- (b) place the completed ballot paper in the inner envelope marked 'Ballot paper only' and seal the envelope; and
- (c) place the inner envelope, together with the completed certificate, in the outer envelope that is addressed to the returning officer and seal the envelope; and
- (d) write his or her full name and address in the appropriate place on the back of the envelope; and
- (e) send the envelope to the returning officer.

## SCHEDULE 1 (continued)

**PART 3—THE SCRUTINY****Appointment of scrutineers**

**8.(1)** The society may appoint a scrutineer to monitor the scrutiny and the counting of postal votes.

**(2)** Any other interested person may, with the consent of the returning officer, appoint a scrutineer to monitor the scrutiny and counting of the postal votes.

**(3)** A scrutineer is entitled to be present at the scrutiny and counting of postal votes.

**Scrutiny of envelopes**

**9.(1)** On receipt, before the close of ballot, of an outer envelope purporting to contain a ballot paper, the returning officer—

- (a) must examine the name on the back of the envelope; and
- (b) if satisfied that a person of that name is eligible to vote must open the envelope and extract from it any postal vote certificate and any inner envelope marked ‘Ballot paper only’.

**(2)** The returning officer must accept for scrutiny any inner envelope that is accompanied by a postal vote certificate if satisfied that the person who purports to have signed the certificate is a member of the society.

**(3)** The returning officer must endorse on any inner envelope accepted for scrutiny the classes of shares held by the person who purports to have signed the postal vote certificate, together with the number of shares of each class so held by the person.

**(4)** The returning officer must draw a line through the person’s name on the roll of eligible voters.

**(5)** If the returning officer is not satisfied that the signature appearing on the certificate is the signature of the person whose name and address appear on the back of the outer envelope, the returning officer—

**SCHEDULE 1 (continued)**

- (a) may make such enquiries as the returning officer considers appropriate; and
- (b) if satisfied, after making those enquiries, that the signature is not the signature of that person must reject any ballot paper in the inner envelope without opening the inner envelope.

**Scrutiny of votes****10.(1)** The scrutiny of votes must be conducted as follows—

- (a) the returning officer must produce unopened the inner envelopes containing the ballot papers accepted for scrutiny in respect of the ballot;
- (b) the returning officer must then open each envelope, extract the ballot paper (without unfolding it), copy onto the ballot paper the endorsement made on the envelope and place the ballot paper in a ballot box or, if the shares in the society are divided into different classes, in a ballot box for members holding shares of the relevant class;
- (c) when the ballot papers have been placed in the ballot box or ballot boxes, the returning officer must unlock the ballot box or boxes and remove the ballot papers;
- (d) the returning officer must then examine each ballot paper and reject those that are informal;
- (e) the returning officer must then proceed to count the votes from each ballot box.

**(2)** A ballot paper must be rejected as informal if—

- (a) it is not initialled by the returning officer or by an assistant returning officer; or
- (b) it has on it any mark or writing (other than an endorsement made in accordance with this section) that, in the returning officer's opinion, could enable any person to identify the voter who

**SCHEDULE 1 (continued)**

completed it; or

- (c) it has not been completed so as to show a vote.

**Counting of votes**

**11.(1)** The returning officer must then proceed to count the votes.

**(2)** On completing the count, the returning officer must make out a return to the society certifying—

- (a) the number and percentage of members of the society who voted in the postal ballot; and
- (b) the number and percentage of members of the society who voted in favour of the proposed conversion of the society into a company or credit union; and
- (c) if the society has issued shares of more than 1 class—the number of members who hold shares of each class who voted in favour of the proposal and the percentage of shares of the relevant class held by those members.

**PART 4—MISCELLANEOUS****Disputes**

**12.(1)** Any dispute that arises about a decision made by the returning officer under this Schedule must be referred to the SSA.

**(2)** The SSA must determine any dispute referred to it under this section and its determination is final.

**SCHEDULE 1 (continued)****Retention of ballot papers etc.**

**13.(1)** The returning officer must retain all ballot papers, declarations and outer envelopes received from voters in connection with the ballot until the SSA authorises their destruction.

**(2)** The returning officer must deliver the materials referred to in subsection (1) to the SSA if the SSA so requires.

**Computerised counting of votes**

**14.** The returning officer may make use of electronic data processing equipment in the counting of votes.

**Vacation of office of returning officer etc.**

**15.(1)** A person ceases to hold office as a returning officer or assistant returning officer if the person—

- (a) dies; or
- (b) resigns by notice of resignation delivered to the society; or
- (c) is removed from office by the society or the SSA.

**(2)** The society may not remove a person from office as a returning officer, or assistant returning officer, without the approval of the SSA.

**Offence**

**16.** A person must not purport to exercise a vote in a postal ballot knowing that the person is not entitled to exercise the vote.

Maximum penalty—\$500.

## SCHEDULE 2

### CHARGES

section 17

**(Pt 3.5 of the Corporations Law applied to a society under s 227 of the Code)<sup>5</sup>**

#### *Division 1—Preliminary*

##### **Interpretation and application**

**261.(1)** In this *Schedule*, unless the contrary intention appears—

**“company”** (*omitted*)

**“document of title”** means a document—

- (a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or
- (b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land;

and includes—

- (c) a bill of lading;
- (d) a warehouse keeper’s certificate;
- (e) a wharfinger’s certificate;
- (f) a warrant or order for the delivery of goods; and
- (g) a document that is, or evidences title to, a marketable security.

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<sup>5</sup> Textual modifications are indicated by italic script.



## SCHEDULE 2 (continued)

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

**“property”** means *property within or outside Australia held by a society, and includes property held as a trustee.*

**“prospective liability”**, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability.

**“Register”** means the *Register of Charges* referred to in section 265.

**“registrable charge”** means a charge in relation to which, by virtue of section 262, the provisions of this *Schedule* mentioned in section 262(1) apply.

(2) A charge referred to in section 263(3) or section 264 shall, until the charge is registered, be treated for the purposes of this *Schedule* as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

(3) The registration of a charge referred to in section 263(3) or section 264 does not prejudice any priority that would have been accorded to the charge under any other law (whether an Australian law or not) if the charge had not been registered.

(4) *For the purposes of this Schedule, a notice or other document shall be taken to be lodged when it is received at an office of the SSA by an officer authorised to receive it.*

***Division 2—Registration*****Charges required to be registered**

**262.(1)** Subject to this section, the provisions of this *Schedule* relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply in relation to the following charges (whether legal or

## SCHEDULE 2 (continued)

equitable) on property of a *society* and do not apply in relation to any other charges—

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

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

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

## SCHEDULE 2 (continued)

- (c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;
- (d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or
- (e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

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

- (a) a document evidencing title to land;
- (b) a chattel interest in land;
- (c) a marketable security;
- (d) a document evidencing a thing in action; or
- (e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

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

(5) The reference in *subsection* (1)(h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security

## SCHEDULE 2 (continued)

(however described) that is registrable under a law of a State or Territory that is, for the purposes of section 262(5) of the Corporations Law, a prescribed law of that State or Territory.

(6) For the purposes of this section, a *society* shall be deemed to have deposited a document of title to property with another person (in this subsection referred to as the “**chargee**”) in a case where the document of title is not in the possession of the *society* if—

- (a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or
- (b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

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

(8) The provisions of this *Schedule* mentioned in subsection (1) do not apply in relation to a charge on land.

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

(10) The provisions of this *Schedule* mentioned in subsection (1) do not apply in relation to a charge created by a *society* in its capacity as legal personal representative of a deceased person or a trustee of the estate of a deceased person.

(11) A charge on property of a *society* is not invalid merely because of the failure to lodge with the SSA, or give to the *society* or another person, a notice or other document that is required by this Division to be so lodged or given.

## SCHEDULE 2 (continued)

**Lodgment of notice of charge and copy of instrument**

**263.(1)** Where a *society* creates a charge, the *society* shall ensure that there is lodged, within 45 days after the creation of the charge—

- (a) a notice in *a form approved by the SSA* setting out the following particulars—
  - (i) the name of the *society* and the date of the creation of the charge;
  - (ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;
  - (iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;
  - (iv) a short description of the liability (whether present or prospective) secured by the charge;
  - (v) a short description of the property charged;
  - (vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;
  - (vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for the debenture holders;
  - (viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders—the name of the chargee;
  - (ix) such other information as is prescribed;
- (b) if, pursuant to a resolution or resolutions passed by the *society*, the *society* issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in

## SCHEDULE 2 (continued)

writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture; and

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

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

- (a) the charge shall, for the purposes of subsection (1), be deemed to be created when the first debenture in the series of debentures is issued; and
- (b) if, after the issue of the first debenture in the series, the *society* passes a further resolution authorising the issue of debentures in the series, the *society* shall ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

(3) (*omitted*)

(4) (*omitted*)

(5) A notice in relation to a charge, being a charge in relation to which *subsection (1)(b) or (c)* applies, shall not be taken to have been lodged under *subsection (1)* unless the notice is accompanied by the documents specified in that *subsection*.

(6) Where a notice with respect to an instrument creating a charge has been lodged under *subsection (1)*, being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, sections 279 to 282 (inclusive) have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

## SCHEDULE 2 (continued)

(7) Where a payment or discount has been made or allowed, either directly or indirectly, by a *society* to a person in consideration of the person's subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under *subsection (1)* shall include particulars as to the amount or rate per centum of the payment or discount.

(8) Where a *society* issues debentures as security for a debt of the *society*, the *society* shall not thereby be regarded, for the purposes of subsection (7), as having allowed a discount in respect of the debentures.

**Acquisition of property subject to charge**

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

- (a) ensure that there is lodged—
  - (i) a notice in *the form approved by the SSA* in relation to the charge, setting out the name of the *society* and the date on which the property was so acquired and otherwise complying with the requirements of *section 263(1)(a)*;
  - (ii) if the charge was created or evidenced as mentioned in *section 263(1)(b)*—a copy of the resolution or each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and
  - (iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in *section 263(1)(b)*)—
    - (A) the instrument or each of the instruments; or

## SCHEDULE 2 (continued)

- (B) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and
  - (b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.
- (2) A notice in relation to a charge, being a charge in relation to which *subsection (1)(a)(ii) or (iii) applies*, shall not be taken to have been lodged under subsection (1) unless it is accompanied by the *specified documents*.

**Registration of documents relating to charges**

**265.(1)** The SSA shall keep a register to be known as the *Register of Charges*, and *section 71(3)(a) of the Code applies in relation to the Register of Charges as if it were a document lodged with the SSA*.

(2) Where a notice in respect of a charge on property of a *society* that is required by section 263 or 264 to be lodged is lodged (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the SSA shall as soon as practicable cause to be entered in the Register the time and date when the notice was lodged and the following particulars in relation to the charge—

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

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



## SCHEDULE 2 (continued)

## (4) Where—

- (a) a notice in respect of a charge on property of a *society* is lodged under section 263 or 264 (whether during or after the period within which the notice was required to be lodged); and
- (b) the notice is not accompanied by a certificate to the effect that all documents accompanying the notice have been duly stamped as required by any applicable law relating to stamp duty;

the SSA must cause to be entered in the Register the time and date when the notice was lodged and the particulars referred to in *subsection* (2)(a), (b), (c) and (d), but must cause the word “provisional” to be entered in the Register in relation to the entry specifying that time and date.

## (5) Where—

- (a) in accordance with subsection (4), the word “provisional” is entered in the Register in relation to an entry specifying the time and date on which a notice *in respect of a charge* was lodged; and
- (b) within a period of 30 days or such longer period as is prescribed after the notice was lodged, or within such further period as the SSA, if it considers it to be appropriate in a particular case, allows, a certificate to the effect set out in *subsection* (4)(b) has been produced to the SSA;

the SSA shall delete the word “provisional” that was so entered in relation to the entry relating to that charge, but if such a certificate is not produced within the period, or the further period, referred to in paragraph (b), the SSA shall delete from the Register all the particulars that were entered in relation to the charge.

(6) Where a document that purports to be a notice in respect of a charge on property of a *society* for the purposes of section 263 or 264 is lodged (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the *society* concerned and the particulars referred to in *section* 263(1)(a)(vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective—

## SCHEDULE 2 (continued)

- (a) the SSA shall cause to be entered in the Register the time and date when the document was lodged and such of the particulars referred to in *subsection* (2)(a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word “provisional” to be entered in the Register in relation to the entry specifying that time and date; and
  - (b) the SSA shall, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of section 263 or 264, as the case may be, but the giving by the SSA of a direction to the person under this paragraph does not affect any liability that the *society* may have incurred or may incur by reason of a contravention of section 263 or 264.
- (7) Where the SSA gives a direction to a person under *subsection* (6)(b) in relation to a charge—
- (a) if the direction is complied with on or before the day specified in the notice containing the direction, the SSA shall—
    - (i) delete from the Register the word “provisional” that was inserted pursuant to *subsection* (6)(a); and
    - (ii) cause to be entered in the Register in relation to the charge any particulars referred to in *subsection* (2) that have not previously been entered;
  - (b) if the direction is not complied with on or before that day—the SSA shall delete from the Register all the particulars that were entered in relation to the charge; and
  - (c) if the direction is complied with after that day—the SSA shall cause to be entered in the Register in relation to the charge the time at which and day on which the direction was complied with and the particulars referred to in *subsection* (2)(a), (b), (c) and (d).
- (8) The SSA may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the SSA thinks fit.

## SCHEDULE 2 (continued)

(9) If the word “provisional” is entered in the Register in relation to an entry specifying a time and day in relation to a charge, the charge shall be deemed not to have been registered but—

- (a) where the word “provisional” is deleted from the Register pursuant to subsection (5) or *subsection (7)(a)*—the charge shall be deemed to be registered and to have been registered from and including the time and day specified in the Register pursuant to subsection (4) or *subsection (6)(a)*, as the case may be; or
- (b) where the particulars in relation to the charge are deleted from the Register pursuant to *subsection (7)(b)* and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to *subsection (7)(c)*—the charge shall be deemed to be registered from and including that last-mentioned time and day.

(10) (*omitted*)

(11) (*omitted*)

(12) Where, pursuant to section 264, a *society* lodges notices relating to 2 or more charges on the same property acquired by the *society* (being charges that are not already registered under this Division), the time and day that shall be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

(13) Where, in accordance with subsection (12), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a *society*, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

(14) Where a notice is lodged under section 268 (whether during or after the period within which it was required to be lodged), the *SSA* shall as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.

## SCHEDULE 2 (continued)

**Standard time for the purposes of section 265**

**265A.(1)** The SSA may, by Gazette notice, declare a specified standard time to be the standard time for the purposes of section 265 of *this Schedule*.

(2) Where a notice is in force under subsection (1) of this section and each corresponding law, a reference in *section 265* (2), (4), (6)(a), (7)(c), (12) or (14), to entering the time when a particular event happened is a reference to entering that time as expressed in terms of the standard time specified in the notice.

**Certain charges void against liquidator or official manager**

**266.(1)** Where—

- (a) an order is made, or a resolution is passed, for the winding up of a *society*; or
- (b) an official manager is appointed in respect of a *society*;

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

- (c) a notice in respect of the charge was lodged under section 263 or 264, as the case requires—
  - (i) within the relevant period; or
  - (ii) at least 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;
- (d) *the* period within which a notice in respect of the charge (other than a notice under section 268) is required to be lodged, being the period specified in the relevant section or that period as extended by the Court under subsection (4), has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period;

## SCHEDULE 2 (continued)

(e) (*omitted*)

(f) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a *society* has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period.

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

(a) in relation to a charge to which *section* 263(1) applies—the period of 45 days specified in that subsection, or that period as extended by the Court under subsection (4) of this section;

(b) (*omitted*)

(c) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a *society*.

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

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

(b) an official manager is appointed in respect of the *society*;

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

(c) a notice in respect of the variation was lodged under section 268—

(i) within the period of 45 days specified in *section* 268(2) or that period as extended by the Court under subsection (4) of this section; or

(ii) not later than 6 months before the commencement of the

## SCHEDULE 2 (continued)

winding up or the appointment of the official manager, as the case may be; or

- (d) the period of 45 days specified in *section* 268(2), or that period as extended by the Court under subsection (4) of this section, has not ended at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the end of that period.

(4) The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division—

- (a) was accidental or due to inadvertence or some other sufficient cause; or
- (b) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief, may, on the application of the *society* or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

(5) Where—

- (a) a registrable charge (in this subsection referred to as the “**later charge**”) is created before the end of 45 days after the creation of a unregistered registrable charge (in this subsection referred to as the “**earlier charge**”);
- (b) the later charge relates to all or any of the property to which the earlier charge related; and
- (c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability;

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the *society*, notwithstanding that a notice in respect of the later charge was lodged under section 263 within a period mentioned in

## SCHEDULE 2 (continued)

*subsection* (1)(c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

(6) Nothing in subsection (1) or (3) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of—

- (a) the filing of an application for an order for the winding up of the *society*;
- (b) the passing of a resolution for the voluntary winding up of the *society*; or
- (c) the passing of a resolution that the *society* be placed under official management.

(7) The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in *subsection* (6)(a), (b) and (c) is on the person asserting that the property was so purchased.

**Charges in favour of certain persons void in certain cases**

**267.(1)** Where—

- (a) a *society* creates a charge on property of the *society* in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and
- (b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under subsection (3), given leave for the charge to be enforced;

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and shall be deemed always to have been, void.

## SCHEDULE 2 (continued)

(2) Without limiting the generality of subsection (1), a person who—

- (a) appoints a receiver of property of a *society* under powers conferred by an instrument creating or evidencing a charge created by the *society*; or
- (b) whether directly or by an agent, enters into possession or assumes control of property of a *society* for the purposes of enforcing a charge created by the *society*;

shall be taken, for the purposes of subsection (1), to take a step in the enforcement of the charge.

(3) On application by the chargee under a charge, the Court may, if it is satisfied that—

- (a) immediately after the creation of the charge, the *society* that created the charge was solvent; and
- (b) in all the circumstances of the case, it is just and equitable for the Court to do so;

give leave for the charge to be enforced.

(4) Nothing in subsection (1) affects a debt, liability or obligation of a *society* that would, if that subsection had not been enacted, have been secured by a charge created by the *society*.

(5) Nothing in subsection (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

(6) The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subsection (5) is on the person asserting that the property was so purchased.

(7) In this section—



## SCHEDULE 2 (continued)

**“chargee”**, in relation to a charge, means—

- (a) in any case—the holder, or all or any of the holders, of the charge; or
- (b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether upon demand or otherwise—that person, or all or any of those persons.

**“officer”** *includes, in the case of a registered foreign society, a local agent of the society.*

**“receiver”** includes a receiver and manager.

**“relevant person”**, in relation to a charge created by a *society*, means—

- (a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the *society*; or
- (b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

**Assignment and variation of charges**

**268.(1)** Where, after a registrable charge on property of a *society* has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he, she or it becomes the holder of the charge—

- (a) lodge a notice stating that he, she or it has become the holder of the charge; and
- (b) give the *society* a copy of the notice.

**(2)** Where, after a registrable charge on property of a *society* has been created, there is a variation in the terms of the charge having the effect of—

- (a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or
- (b) prohibiting or restricting the creation of subsequent charges on the property;

## SCHEDULE 2 (continued)

the *society* shall, within 45 days after the variation occurs, ensure that there is lodged a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

(3) Where a charge created by a *society* secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the *society* in accordance with the terms of the charge shall not be taken, for the purposes of subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

(4) A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture and debentures and there is a trustee for debenture holders, be construed as a reference to the trustee for debenture holders.

(5) Nothing in section 263 requires the lodgment of a notice under that section in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this section.

**Satisfaction of, and release of property from, charges**

**269.(1)** Where, with respect to a charge registered under this Division—

- (a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or
- (b) the property charged or part of that property is released from the charge;

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the *society* on whose property the charge exists, give to the *society* a memorandum in *a form approved by the SSA* acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the

## SCHEDULE 2 (continued)

case may be.

(2) The *society* may lodge the memorandum and, upon the memorandum being lodged, the SSA shall enter in the Register particulars of the matters stated in the memorandum.

(3) The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, be construed as a reference to the person who was, at that time, the trustee for debenture holders.

**Lodgment of notices, offences etc**

**270.(1)** Where a notice in respect of a charge on property of a *society* is required to be lodged under section 263, 264 or 268(2), the notice may be lodged by the *society* or by any interested person.

(2) Where default is made in complying with section 263, 264 or 268(2) in relation to a registrable charge on property of a *society*, the *society* and any officer of the *society* who is in default each contravene this subsection.

(3) Where a person who becomes the holder of a registrable charge fails to comply with section 268 (1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subsection.

(4) Where a document required by this Division other than section 268(1) to be lodged is lodged by a person other than the *society* concerned, that person—

- (a) shall, within 7 days after the lodgment of the document, give to the *society* a copy of the document; and
- (b) is entitled to recover from the *society* the amount of any fees properly paid by the person on lodgment of the document.

## SCHEDULE 2 (continued)

***Society to keep documents relating to charges and register of charges***

**271.(1)** A *society* shall keep, at the place where the register referred to in subsection (2) is kept, a copy of every document relating to a charge on property of the *society* that is lodged under this Division or was lodged with a person under a corresponding previous law, and a copy of every document given to the *society* under this Division or a corresponding previous law.

(2) A *society* shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the *society*, or upon the acquisition of property subject to a charge (whether registrable or not), as soon as practicable enter in the register particulars of the charge, giving in each case—

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

(3) A register kept by a *society* pursuant to subsection (2) shall be open for inspection—

- (a) by any creditor or member of the *society*—without charge; and
- (b) by any other person—on payment for each inspection of such amount, not exceeding \$5, as the *society* requires or, where the *society* does not require the payment of an amount, without charge.

(4) A person may request a *society* to furnish the person with a copy of the register or any part of the register and, where such a request is made, the

## SCHEDULE 2 (continued)

*society* shall send the copy to that person—

- (a) if the *society* requires payment of an amount not exceeding \$5 plus \$0.50 for each page—within 21 days after payment of the amount is received by the *society* or within such longer period as the SSA approves; or
- (b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the SSA approves.

(5) If default is made in complying with any provision of this section, the *society* and any officer of the *society* who is in default are each guilty of an offence.

**Certificates**

**272.(1)** Where particulars of a charge are entered in the Register in accordance with this Division, the SSA shall, on request by any person, issue to that person a certificate under the common seal of the SSA setting out those particulars and stating the time and day when a notice in respect of the charge containing those particulars was lodged with the SSA and, if the word “provisional” appears in the Register in relation to the reference to that time and day, stating that fact.

(2) A certificate issued under subsection (1) is prima facie evidence of the matters stated in the certificate.

(3) Where particulars of a charge are entered in the Register in accordance with this Division, and the word “provisional” does not appear in the register in relation to the reference to the time and day when a notice in respect of the charge was lodged, the SSA shall, on request by any person, issue to that person a certificate under the common seal of the SSA stating that particulars of the charge are entered in the Register in accordance with this Division.

(4) A certificate issued under subsection (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within

## SCHEDULE 2 (continued)

which notice in respect of the charge is required to be lodged) have been complied with.

**Registration under other legislation relating to charges**

**273. (1)** Where, whether before or after the prescribed time, a notice in relation to a charge is required to be lodged under this Division—

- (a) the charge need not be registered under a specified law of this jurisdiction; and
- (b) no provision of a specified law of this jurisdiction relating to priorities applies to or in relation to the charge; and
- (c) a failure to register a charge under a specified law of this jurisdiction does not affect the validity, or limit the effect, of the charge.

**(2)** Where—

- (a) a transfer, assignment, or giving of security, by a *society* is registrable under a specified law of this jurisdiction;
- (b) notice in relation to the transfer, assignment or giving of security is required to be lodged under this Division; and
- (c) the transfer, assignment or giving of security is registered under this Division;

then—

- (d) the transfer, assignment or giving of security is, subject to *subsection (1)(b)*, as valid and effectual; and
- (e) by force of this subsection, the specified provisions (if any) of a law of this jurisdiction have effect, with the prescribed modifications (if any), in relation to the transfer, assignment or giving of security;

as if it had been duly registered under that specified law.

**(3)** Where—

- (a) a crop lien, wool lien, or stock mortgage, given by a *society* is

## SCHEDULE 2 (continued)

registrable under a specified law of this jurisdiction;

- (b) notice in relation to the crop lien, wool lien, or stock mortgage, is required to be lodged under this Division; and
- (c) the crop lien, wool lien, or stock mortgage, is registered under this Division;

then—

- (d) the crop lien, wool lien or stock mortgage is, subject to *subsection (1)(b)*, as valid and effectual; and
- (e) by force of this subsection, the specified provisions (if any) of a law of this jurisdiction have effect, with the prescribed modifications (if any), in relation to the crop lien, wool lien, or stock mortgage;

as if it had been duly registered under that specified law.

(4) Subject to this *Schedule*, the regulations may provide that specified provisions of a law of this jurisdiction—

- (a) do not apply; or
- (b) apply, because of the regulations and with the prescribed modifications (if any);

in relation to specified charges in relation to which notices must be lodged under this Division.

(5) Nothing in this section applies in relation to a charge given by a *society* jointly with another person who is not, or other persons at least one of whom is not, a *society*.

(6) In this section—

“**specified**” means specified in an application order *under section 111A of the Corporations Law*.

### Power of Court to rectify Register

274. Where the Court is satisfied—

## SCHEDULE 2 (continued)

- (a) that a particular with respect to a registrable charge on property of a *society* has been omitted from, or misstated in, the Register or a memorandum referred to in section 269; and
- (b) that the omission or misstatement—
  - (i) was accidental or due to inadvertence or to some other sufficient cause; or
  - (ii) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief;

the Court may, on the application of the *society* or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or misstatement be rectified.

**275.** (*omitted*)

**276.** (*omitted*)

**276AA.** (*omitted*)

**276A.** (*omitted*)

**Power to exempt from compliance with certain requirements of Division**

**277.(1)** The SSA may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of section 263, 264 or 268 relating to—

- (a) the particulars to be contained in a notice under the relevant section;



## SCHEDULE 2 (continued)

- (b) the documents (other than the notice) to be lodged under the relevant section; or
- (c) the verification of any document required to be lodged under the relevant section;

as are specified in the instrument.

(2) A person who is exempted by the *SSA* subject to a condition, from compliance with a requirement of section 263, 264 or 268 shall not contravene the condition.

(3) Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the *SSA*, order the person to comply with the condition.

*Division 3—Order of priority***Interpretation**

**278.(1)** In this Division—

**“priority time”**, in relation to a registered charge, means—

- (a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 265;
- (b) where a notice has been lodged under section 264 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 2—the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 264; and
- (c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under section 268(2)—the time and day entered in the Register in relation to the charge pursuant to section 265(14).

**“prior registered charge”**, in relation to another registered charge, means a

## SCHEDULE 2 (continued)

charge the priority time of which is earlier than the priority time of the other charge.

**“subsequent registered charge”**, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge.

**“registered charge”** means a charge that is registered under Division 2.

**“unregistered charge”** means a charge that is not registered under Division 2 but does not include a charge that is not a registrable charge.

(2) A reference in this Division to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

(3) Where, by virtue of the definition of “priority time” in subsection (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities shall, for the purposes of this Division, be deemed to be secured by a separate registered charge the priority time of which is the priority time of the first mentioned registered charge that relates to the liability concerned.

**Priorities of charges**

**279.(1)** Subject to this section, sections 280 to 282, inclusive, have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a *society*.

(2) The application, in relation to particular registrable charges, of the order of priorities of charges set out in sections 280 to 282, inclusive, is subject to—

- (a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and
- (b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

## SCHEDULE 2 (continued)

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

- (a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and
- (b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the SSA under section 263, 264 or 268 before the creation of the subsequent registered charge.

(4) Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of *section* 262(1) applies or apply and also relates to other property, sections 280 to 282, inclusive, apply so as to affect the priority of the charge only in so far as it relates to the first mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

(5) Sections 280 to 282, inclusive, do not apply so as to affect the operation of—

- (a) the *Copyright Act 1968*;
- (b) the *Designs Act 1906*;
- (c) the *Life Insurance Act 1945*;
- (d) the *Patents Act 1952*; or
- (e) the *Trade Marks Act 1955*.

**General priority rules in relation to registered charges**

**280.(1)** A registered charge on property of a *society* has priority over—

- (a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the

## SCHEDULE 2 (continued)

subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

- (b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and
- (c) an unregistered charge on the property created after the creation of the registered charge.

(2) A registered charge on property of a *society* is postponed to—

- (a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and
- (b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

**General priority rule in relation to unregistered charges**

**281.** An unregistered charge on property of a *society* has priority over—

- (a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under *section* 280(1);
- (b) another unregistered charge on the property created after the first mentioned unregistered charge.

## SCHEDULE 2 (continued)

**Special priority rules**

**282.(1)** Except as provided by this section, any priority accorded by this Division to a charge over another charge does not extend to any liability that, at the priority time in relation to the first mentioned charge, is not a present liability.

**(2)** Where a registered charge on property of a *society* secures—

- (a) a present liability and a prospective liability of an unspecified amount; or
- (b) a prospective liability of an unspecified amount;

any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first mentioned charge.

**(3)** Where a registered charge on property of a *society* secures—

- (a) a present liability and a prospective liability up to a specified maximum amount; or
- (b) a prospective liability up to a specified maximum amount;

and the notice lodged under section 263 or 264 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Division to the charge over another charge extends to any prospective liability secured by the first mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first mentioned charge and notwithstanding that the chargee in relation to the first mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

**(4)** Where—

- (a) a registered charge on property of a *society* secures—
  - (i) a present liability and a prospective liability up to a specified maximum amount; or

## SCHEDULE 2 (continued)

- (ii) a prospective liability up to a specified maximum amount; but the notice lodged under section 263 or 264 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or
- (b) a registered charge on property of a *society* secures a prospective liability of an unspecified amount;

the following paragraphs have effect—

- (c) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first mentioned charge has actual knowledge extends to any prospective liability secured by the first mentioned charge that had become a present liability at the time when the chargee in relation to the first mentioned charge first obtained actual knowledge of the other charge;
- (d) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first mentioned charge has actual knowledge extends to any prospective liability secured by the first mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first mentioned charge and notwithstanding that the chargee in relation to the first mentioned charge had actual knowledge of the other charge at the time when the advance was made.

## SCHEDULE 3

### ARRANGEMENTS AND RECONSTRUCTIONS

section 28

**(Pt 5.1 of the Corporations Law applied to Societies under s 337 of the Code)<sup>6</sup>**

#### **Interpretation**

**410.(1)** A reference in this *Schedule*, in relation to a *body*, to the directors is a reference to the directors of the *body* or any one or more of them.

*(2) A reference in this Schedule to a body is a reference to a society or a related body corporate.*

#### **Administration of compromises etc**

**411.(1)** Where a compromise or arrangement is proposed between a *body* and its creditors or any class of them or between a *body* and its members or any class of them, the Court may, on the application in a summary way of the body or of any creditor or member of the body, or, in the case of a body being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors or of the members of the body or class of members to be convened in such manner, and to be held in such place or places (in this jurisdiction or elsewhere), as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by *section* 412(1)(a) to accompany notices of the meeting or meetings.

**(1A)** Where—

(a) a compromise or arrangement is proposed—

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<sup>6</sup> Textual modification is indicated by italic script.

## SCHEDULE 3 (continued)

- (i) between 30 or more *bodies* that are wholly-owned subsidiaries of a holding *society* and the creditors or a class of the creditors of each of those subsidiaries; and
  - (ii) between the holding *society* and the creditors or a class of the creditors of the holding *society*; and
- (b) the proposed compromise or arrangement in relation to each subsidiary includes a term that orders will be sought under section 413 transferring the whole of the undertaking and of the property and liabilities of the subsidiary to the holding *society*; and
- (c) the Court is satisfied, on the application in a summary way—
  - (i) of the holding *society* or of a creditor of the holding *society*; or
  - (ii) if the holding *society* is being wound up—of the liquidator;that the number of meetings that would be required between creditors in order to consider the proposed compromises or arrangements would be so great as to result in a significant impediment to the timely and effective consideration by those creditors of the terms of the compromises or arrangements;

the Court may order a meeting or meetings, on a consolidated basis, of the creditors of the holding *society* and of each of the subsidiaries or of such class or classes of those creditors as the Court determines and, where the Court makes such an order, the Court may approve the explanatory statement required by *section* 412(1)(a) to accompany notices of the meeting or meetings.

**(1B)** Where—

- (a) there are fewer than 30 wholly-owned subsidiaries of the holding *society* but the matters referred to in *subsection* (1A)(b) and (c) are satisfied; and
- (b) the Court considers that circumstances exist that would justify its doing so;

the Court may make an order under *subsection* (1A) in relation to the proposed compromise or arrangement.



## SCHEDULE 3 (continued)

(1C) Where an order is made under subsection (1A) in relation to a proposed compromise or arrangement, the succeeding provisions of this *Schedule* apply to the compromise or arrangement as if—

- (a) references in this *Schedule* to a *body* included references to all of the *bodies* to which the order relates; and
- (b) references in this *Schedule* to creditors of a *body* included references to the creditors of all the *bodies* to which the order relates; and
- (c) references in this *Schedule* to a class of the creditors of a *body* were references to the relevant class of creditors of all of the *bodies* to which the order relates.

(2) The Court shall not make an order pursuant to an application under subsection (1) or (1A) unless—

- (a) 14 days notice of the hearing of the application, or such lesser period of notice as the Court or the SSA permits, has been given to the SSA; and
- (b) the Court is satisfied that the SSA has had a reasonable opportunity—
  - (i) to examine the terms of the proposed compromise or arrangement to which the application relates and a draft explanatory statement relating to the proposed compromise or arrangement; and
  - (ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

(3) In subsection (2), “**draft explanatory statement**”, in relation to a proposed compromise or arrangement between a body and its creditors or any class of them or between a body and its members or any class of them, means a statement—

- (a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the body, whether as directors, as members or creditors of the

## SCHEDULE 3 (continued)

body or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

- (b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member of the body whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the body and has not previously been disclosed to the creditors or members of the body.

**(3A)** In considering whether to make an order under subsection (1) or (1A) for a meeting to be held in another jurisdiction, the Court must have regard to where the creditors or members, or the creditors or members included in the class concerned, as the case requires, reside.

**(4)** A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the members, or on a class of members, as the case may be, of the body and on the body or, if the body is in the course of being wound up, on the liquidator and contributories of the body, if, and only if—

- (a) at a meeting convened in accordance with an order of the Court under subsection (1) or (1A)—
  - (i) in the case of a compromise or arrangement between a body and its creditors or a class of creditors—the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the *society* amount in the aggregate to at least 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and
  - (ii) in the case of a compromise or arrangement between a body and its members or a class of members—the compromise or arrangement is agreed to by a majority in number of the

## SCHEDULE 3 (continued)

members, or of the members included in that class of members, present and voting, either in person or by proxy, being, in the case of a body having a share capital, a majority whose shares have nominal values that amount, in the aggregate, to at least 75% of the total of the nominal values of all the shares of the members present and voting in person or by proxy, or of the members included in that class present and voting in person or by proxy, as the case may be; and

- (b) it is approved by order of the Court.

(5) Where the Court orders 2 or more meetings of creditors or of a class of creditors, or 2 or more meetings of members or of a class of members, to be held in relation to the proposed compromise or arrangement—

- (a) in the case of meetings of creditors—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly; or
- (b) in the case of meetings of members—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

(6) The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

(7) Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this *Schedule* between a body and its creditors or any class of them or between a body and its members or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person—

## SCHEDULE 3 (continued)

- (a) is a mortgagee of any property of the body;
- (b) is an auditor or an officer of the body;
- (c) is an officer of a body corporate that is a mortgagee of property of the body;
- (d) is not a registered liquidator;
- (e) is an officer of a body corporate related to the body; or
- (f) unless the *SSA* directs in writing that this paragraph does not apply in relation to the person in relation to the body—has at any time within the last 12 months been an officer or promoter of the body or of a related body corporate.

(8) *Subsection (7)(d)* does not apply in relation to a body corporate authorised by or under a law of this jurisdiction to administer the compromise or arrangement concerned.

(8A) (*omitted*)

(9) Where a person is or persons are appointed by, or under a power given by, the terms of a compromise or arrangement, to administer the compromise or arrangement—

- (a) *sections 425, 427(2) and (4), 428, 432 and 434* apply in relation to that person or those persons as if—
  - (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of property of the body; and
  - (ii) a reference in any of those sections or subsections to a receiver, or to a receiver of property, of a corporation were a reference to that person or to those persons; and
- (b) *section 536* applies in relation to that person or those persons as if—
  - (i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the body; and

## SCHEDULE 3 (continued)

- (ii) a reference in that section to a liquidator were a reference to that person or to those persons.

**(10)** An order of the Court made for the purposes of *subsection (4)(b)* does not have any effect until an office copy of the order is lodged with the SSA, and upon being so lodged, notwithstanding *section 171(8)*, the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

**(11)** Subject to subsection (12), a copy of every order of the Court made for the purposes of *subsection (4)(b)* shall be annexed to every copy of the *rules of the body issued after the order has been made*.

**(12)** The Court may, by order, exempt a body from compliance with subsection (11) or determine the period during which the body shall comply with that subsection.

**(13)** Where a compromise or arrangement referred to in subsection (1) or (1A) (whether or not for the purposes of or in connection with a scheme for the reconstruction of a body or bodies or the amalgamation of any 2 or more bodies) has been proposed, the directors *or an administrator* of the body shall—

- (a) if a meeting of the members of the body by resolution so directs—instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the directors *or the administrator, as the case may be*, as soon as practicable; and
- (b) if a report or reports is or are obtained pursuant to paragraph (a)—make the report or reports available at the registered office of the body for inspection by the *members* and creditors of the body at least 7 days before the day of the meeting ordered by the Court to be convened as provided in subsection (1) or (1A), as the case may be.

**(14)** If default is made in complying with subsection (11), the body contravenes this subsection.

**(15)** If default is made in complying with subsection (13), each director

## SCHEDULE 3 (continued)

of the body contravenes this subsection.

(16) Where no order has been made or resolution passed for the winding up of a *body* and a compromise or arrangement has been proposed between the body and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the body or of any member or creditor of the body, restrain further proceedings in any action or other civil proceeding against the body except by leave of the Court and subject to such terms as the Court imposes.

(17) The Court shall not approve a compromise or arrangement under the section unless—

- (a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Chapter 6 of the *Corporations Law*; or
- (b) there is produced to the Court a statement in writing by the *SSA* stating that the *SSA* has no objection to the compromise or arrangement;

but the Court need not approve a compromise or arrangement merely because a statement by the *SSA* stating that the *SSA* has no objection to the compromise or arrangement has been produced to the Court as mentioned in paragraph (b).

**Information as to compromise with creditors**

**412.(1)** Where a meeting is convened under section 411, the body shall—

- (a) with every notice convening the meeting that is sent to a creditor or member, send a statement (in this section called the “**explanatory statement**”)—
  - (i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors, as members or creditors of the body or otherwise, and the effect on those interests of the

## SCHEDULE 3 (continued)

compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

- (ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members; and

- (b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the explanatory statement.

(2) In the case of a creditor whose debt does not exceed \$200, *subsection (1)(a)* does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the body shall as soon as practicable comply with the request.

(3) Where the compromise or arrangement affects the rights of debenture holders, the explanatory statement shall specify any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the body or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

(4) Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor or member entitled to attend the meeting shall, on making application in that matter, be furnished by the body free of charge with a copy of the explanatory statement.

(5) Each person who is a director or trustee for debenture holders shall give notice to the body of such matters relating to the person as are required to be included in the explanatory statement.

## SCHEDULE 3 (continued)

(6) In the case of a compromise or arrangement that is not, or does not include, a compromise or arrangement between a *body* and its creditors or any class of them, the body shall not send out an explanatory statement pursuant to subsection (1) unless a copy of that statement has been registered by the SSA.

(7) Where an explanatory statement sent out under subsection (1) is not required by subsection (6) to be registered by the SSA, the Court shall not make an order approving the compromise or arrangement unless it is satisfied that the SSA has had a reasonable opportunity to examine the explanatory statement and to make submissions to the Court in relation to that statement.

(8) Where a copy of an explanatory statement is lodged with the SSA for registration under subsection (6), the SSA shall not register the copy of the statement unless the statement appears to comply with this *Schedule* and the SSA is of the opinion that the statement does not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears.

(9) Where a body contravenes this section, a person involved in the contravention contravenes this subsection.

(10) It is a defence to a prosecution for a contravention of this section if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the body or a trustee for debenture holders of the body, to supply for the purposes of the explanatory statement particulars of the person's interests.

**Provisions for facilitating reconstruction and amalgamation of societies**

**413.(1)** Where an application is made to the Court under this *Schedule* for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of a *society* or *societies* or the amalgamation of 2 or more *societies* and that, under the scheme, the whole or any part of the undertaking or of the



## SCHEDULE 3 (continued)

property of a *society* concerned in the scheme (in this section called the “**transferor society**”) is to be transferred to a *society* (in this section called the “**transferee society**”), the Court may, either by the order approving the compromise or arrangement or by a later order, provide for all or any of the following matters—

- (a) the transfer to the transferee *society* of the whole or a part of the undertaking and of the property or liabilities of the transferor *society*;
- (b) the allotting or appropriation by the transferee *society* of shares, debentures, policies or other interests in that *society* that, under the compromise or arrangement, are to be allotted or appropriated by that *society* to or for any person;
- (c) the continuation by or against the transferee *society* of any legal proceedings pending by or against the transferor *society*;
- (d) the dissolution, without winding up, of the transferor *society*;
- (e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;
- (f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;
- (g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

(2) Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee *society*, free, in the case of any particular property if the order so directs, from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Where an order is made under this section, each *society* to which the order relates shall, within 14 days after the making of the order, lodge with the SSA an office copy of the order.

## SCHEDULE 3 (continued)

(4) In this section—

**“liabilities”** includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously.

**“property”** includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

**Acquisition of shares of members dissenting from scheme or contract approved by majority**

**414.(1)** In this section—

**“dissenting member”**, in relation to a scheme or contract, means a *member* who has not assented to the scheme or contract or who has failed to transfer his, her or its shares in accordance with the scheme or contract.

**“excluded shares”**, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a *society*, means shares in that class that, when the offer relating to the scheme or contract is made, are held by—

- (a) in any case—the person or a nominee of the person; or
- (b) if the person is a body corporate—a subsidiary of the body.

(2) Where a scheme or contract (not being a scheme or contract arising out of the making of takeover offers, or a takeover announcement under Chapter 6) involving a transfer of shares in a class of shares in a *society* (in this section called the **“transferor society”**) to a person (in this section called the **“transferee”**) has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least nine-tenths in nominal value of the shares included in that class of shares (other than excluded shares), the transferee may, within 2 months after the offer has been so approved, give notice *in a form approved by the SSA* to a dissenting *member* that the transferee wishes to acquire the shares held by that *member*.

(3) Where such a notice is given, then, unless the Court orders otherwise

## SCHEDULE 3 (continued)

on an application by a dissenting *member* made within one month after the day on which the notice was given or within 14 days after a statement is supplied under subsection (7) to a dissenting *member*, whichever is the later, the transferee is entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving *members* are to be transferred to the transferee.

(4) Where alternative terms were offered to the approving *members*, the dissenting *member* is entitled to elect not later than the end of one month after the date on which the notice is given under subsection (2) or 14 days after a statement is supplied under subsection (7), whichever is the later, which of those terms he, she or it prefers and, if he, she or it fails to make the election within the time allowed by this subsection, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting *member*.

(5) Notwithstanding subsections (3) and (4), where the nominal value of the excluded shares exceeds one-tenth of the aggregate nominal value of the excluded shares and the shares (other than excluded shares) to be transferred under the scheme or contract, those subsections do not apply unless—

- (a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and
- (b) the holders who approve the scheme or contract together hold at least nine-tenths in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least three-quarters in number of the holders of those shares.

(6) For the purposes of *subsection* (5)(b), 2 or more persons registered as holding shares jointly shall be counted as one person.

(7) When a notice is given under subsection (2), the dissenting *members* may, by written notice given to the transferee within one month after the day on which the notice was given under subsection (2), ask for a statement in writing of the names and addresses of all other dissenting *members* as shown in the register of members.

## SCHEDULE 3 (continued)

(8) Where a notice is given under subsection (7), the transferee shall comply with it.

(9) Where, under a scheme or contract referred to in subsection (2), the transferee becomes beneficially entitled to shares in the transferor *society* which, together with any other shares in the transferor *society* to which the transferee or, where the transferee is a body corporate, a body corporate related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then—

- (a) the transferee shall, within one month after the date on which he, she or it becomes beneficially entitled to those shares (unless in relation to the scheme or contract he, she or it has already complied with this requirement), give notice of the fact *in a form approved by the SSA* to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (2); and
- (b) such a holder may, within 3 months after the giving of the notice to him, her or it, by notice to the transferee, require the transferee to acquire his, her or its share and, where alternative terms were offered to the approving shareholders, elect which of those terms he, she or it will accept.

(10) Where a *member* gives notice under *subsection (9)(b)* with respect to his, her or its shares, the transferee is entitled and bound to acquire those shares—

- (a) on the terms on which under the scheme or contract the shares of the approving *members* were transferred to him, her or it and, where alternative terms were offered to those *members*, on the terms for which the *member* has elected or where he, she, or it has not so elected, for whichever of the terms the transferee determines; or
- (b) on such other terms as are agreed or as the Court, on the application of the transferee or of the *member*, thinks fit to order.

## SCHEDULE 3 (continued)

(11) Subsections (12) and (13) apply where a notice has been given under subsection (1) unless the Court, on an application made by the dissenting *member*, orders to the contrary.

(12) The transferee shall, within 14 days after—

- (a) the end of one month after the day on which the notice was given;
- (b) the end of 14 days after a statement under subsection (7) is supplied; or
- (c) if an application has been made to the Court by a dissenting *member*—the application is disposed of;

whichever last happens—

- (d) send a copy of the notice to the transferor *society* together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this section and is executed, on the *member's* behalf, by a person appointed by the transferee and, on the transferee's own behalf, by the transferee; and
- (e) pay, allot or transfer to the transferor *society* the consideration for the shares.

(13) When the transferee has complied with subsection (12), the transferor *society* shall register the transferee as the holder of the shares.

(14) All sums received by the transferor *society* under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that *society* in trust for the several persons entitled to the shares in respect of which they were respectively received.

(15) Where a sum or other property received by a *society* under this section or a corresponding previous law has been held in trust by the *society* for a person for at least 2 years (whether or not that period began before the commencement of this *Schedule*) the *society* shall, before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the *society*, pay the sum or transfer the consideration, and any accretions to it and any property that may become substituted for it or for part of it, to the Minister to be dealt with *under the*

## SCHEDULE 3 (continued)

*law relating to unclaimed money or property.*

**Notification of appointment of scheme manager and power of Court to require report**

**415.(1)** Within 14 days after being appointed to administer a compromise or arrangement approved under this *Schedule*, a person shall lodge a notice in writing of the appointment.

**(2)** Where an application is made to the Court under this *Schedule* in relation to a proposed compromise or arrangement, the Court may—

- (a) before making any order on the application, require the SSA or another person specified by the Court to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed, the conduct of the officers of the body or bodies concerned and any other matters that, in the opinion of the SSA or that person, ought to be brought to the attention of the Court;
- (b) in deciding the application, have regard to anything contained in the report; and
- (c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

**Enforcement of orders made in other jurisdictions**

**415A.(1)** Where—

- (a) (*omitted*)
- (b) the Supreme Court of another jurisdiction makes an order *under a provision of the financial institutions legislation in force in that jurisdiction corresponding to section 411(1) or (1A)*; or
- (c) the Supreme Court of this jurisdiction makes an order *under a provision of the financial institutions legislation in force in another jurisdiction corresponding to section 411(1) or (1A)*;

## SCHEDULE 3 (continued)

the order has effect, and may be enforced in all respects, in this jurisdiction as if it were an order made *under section 411(1) or (1A) by the Supreme Court of this jurisdiction*.

(2) A compromise or arrangement that is binding on the creditors, or a class of creditors, of a *body* because of a *provision of the financial institutions legislation* of another jurisdiction *corresponding to section 411(4)* is also binding on the creditors of the body, or the creditors in that class, whose debts are recoverable by action in a court of this jurisdiction.

***Saving provision***

**415B.** *This Schedule must be construed subject to such limitations as prevent—*

- (a) *avoidance of the requirements of section 320 of the Code; or*
- (b) *avoidance of any requirements of the financial institutions legislation affecting takeovers.*

## **SCHEDULE 4**

### **RECEIVERS AND MANAGERS**

section 29

**(Pt 5.2 of the Corporations Law applied to a society under s 338 of the Code)<sup>7</sup>**

#### **Interpretation**

**416.** In this *Schedule*, unless the contrary intention appears—

**“corporation”** (*omitted*)

**“officer”**, in relation to a registered foreign *society*, includes a local agent of the foreign *society*.

**“property”** *includes property within or outside Australia.*

**“receiver”** (*omitted*)

#### **Application of *this Schedule***

**417.** Except so far as the contrary intention appears, this *Schedule* applies in relation to a receiver of property of a *society* who is appointed after the commencement of this section, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

#### **Persons not to act as receivers**

**418.(1)** A person is not qualified to be appointed, and shall not act, as receiver of property of a *society* if the person—

- (a) is a mortgagee of property of the *society*;

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<sup>7</sup> Textual modifications are indicated by italic script.



## SCHEDULE 4 (continued)

- (b) is an auditor or an officer of the *society*;
- (c) is an officer of a body corporate that is a mortgagee of property of the *society*;
- (d) is not a registered liquidator;
- (e) is an officer of a body corporate related to the *society*; or
- (f) unless the SSA directs in writing that this paragraph does not apply in relation to the person in relation to the *society*—has at any time within the last 12 months been an officer or promoter of the *society* or a related body corporate.

(2) In subsection (1)—

“**officer**”, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this section, of property of the body.

(3) Subsection (1)(d) does not apply in relation to a body corporate authorised by or under a law of the Commonwealth, of a State or of a Territory to act as receiver of property of the *society* concerned.

(4) Nothing in this section prevents a person from acting as receiver of property of *a society under an appointment validly made before the commencement of the financial institutions legislation*.

**Liability of receiver**

**419.(1)** A receiver, or any other authorised person, who, whether as agent for the *society* concerned or not, enters into possession or assumes control of any property of a *society* for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to the person’s rights against the *society* or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

(2) Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

## SCHEDULE 4 (continued)

**(3) Where—**

- (a) a person (in this subsection called the “**controller**”) enters into possession or assumes control of property of a *society*;
- (b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and
- (c) civil proceedings in an Australian court arise out of an act alleged to have been done by the controller;

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that—

- (d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and
- (e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

**Powers of receiver**

**420.(1)** Subject to this section, a receiver of property of a *society* has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

**(2)** Without limiting the generality of subsection (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver’s powers in any way, a receiver of property of a *society* has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed—

- (a) to enter into possession and take control of property of the *society*;

## SCHEDULE 4 (continued)

- (b) to lease, let on hire or dispose of property of the *society*;
- (c) to grant options over property of the *society* on such conditions as the receiver thinks fit;
- (d) to borrow money on the security of property of the *society*;
- (e) to insure property of the *society*;
- (f) to repair, renew or enlarge property of the *society*;
- (g) to convert property of the *society* into money;
- (h) to carry on any business of the *society*;
- (j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the *society*;
- (k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the *society*;
- (m) to draw, accept, make and endorse a bill of exchange or promissory note;
- (n) to use a seal of the *society*;
- (o) to engage or discharge employees on behalf of the *society*;
- (p) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;
- (q) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person;
- (r) where a debt or liability is owed to the *society*—to prove the debt or liability in bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;
- (s) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the *society*—
  - (i) in the name of the *society*, to make a call in respect of money

## SCHEDULE 4 (continued)

unpaid on shares in the *society* (whether on account of the nominal value of the shares or by way of premium); or

- (ii) upon the giving of a proper indemnity to a liquidator of the *society*—in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the *society*;
- (t) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise;
- (u) to make or defend an application for the winding up of the *society*; and
- (w) to refer to arbitration any question affecting the *society*.

(3) The conferring by this section on a receiver of powers in relation to property of a *society* does not affect any rights in relation to that property of any other person other than the *society*.

(4) In this section, a reference, in relation to a receiver, to property of a *society* is, unless the contrary intention appears, a reference to the property of the *society* in relation to which the receiver was appointed.

**Duties of receiver with respect to bank accounts and accounting records**

**421.(1)** A receiver of property of a *society* shall—

- (a) open and maintain a bank account bearing the receiver's own name, the title "receiver" and the name of the *society*;
- (b) within 3 business days after money of the *society* comes under the receiver's control, pay that money into the account referred to in paragraph (a);
- (c) ensure that the account referred to in paragraph (a) does not contain any moneys other than the moneys of the *society* that come under the receiver's control; and
- (d) keep such accounting records as correctly record and explain all transactions entered into by the receiver as receiver.

## SCHEDULE 4 (continued)

(2) Any director, creditor or member of a *society* may, unless the Court otherwise orders, personally or by an agent, inspect records kept by a receiver of property of the *society* for the purposes of *subsection* (1)(d).

**Reports by receiver**

**422.(1)** If it appears to the receiver of property of a *society* that—

- (a) a past or present officer, or a member, of the *society* may have been guilty of an offence in relation to the *society*; or
- (b) a person who has taken part in the formation, promotion, administration, management or winding up of the *society*—
  - (i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the *society*; or
  - (ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the *society*;

the receiver shall—

- (c) lodge as soon as practicable a report about the matter; and
- (d) give to the SSA such information, and such access to and facilities for inspecting and taking copies of any documents, as the SSA requires.

(2) The receiver may also lodge further reports specifying any other matter that, in the receiver's opinion, it is desirable to bring to the notice of the SSA.

(3) If it appears to the Court—

- (a) that a past or present officer, or a member, of a *society* in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in *subsection* (1)(a) in relation to the *society*; or
- (b) that a person who has taken part in the formation, promotion, administration, management or winding up of a *society* in respect

## SCHEDULE 4 (continued)

of property of which a receiver has been appointed has engaged in conduct referred to in *subsection (1)(b)* in relation to the *society*;

and that the receiver has not lodged a report about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

**Supervision of receiver****423.(1) If—**

- (a) it appears to the Court or to the SSA that a receiver of property of a *society* has not faithfully performed or is not faithfully performing the receiver's duties or has not observed or is not observing—
  - (i) a requirement of the order by which, or the instrument under which, the receiver was appointed;
  - (ii) a requirement of the Court; or
  - (iii) a requirement of the *financial institutions legislation*; or
- (b) a complaint is made to the Court or to the SSA by any person with respect to the conduct of a receiver of property of a *society* in connection with the performance of the receiver's duties;

the Court or the SSA, as the case may be, may inquire into the matter and, where the Court or SSA so inquires, the Court may take such action as it thinks fit.

(2) The SSA may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the *society* has sustained thereby and may make such other order or orders as it thinks fit.

(3) The Court may at any time require a receiver of property of a *society* to answer any inquiry in relation to the performance of the receiver's duties as receiver and may examine the receiver or any other person on oath concerning the performance of the receiver's duties and may direct an investigation to be made of the receiver's books.

## SCHEDULE 4 (continued)

**Receiver may apply to Court**

**424.** A receiver of property of a *society* appointed under a power contained in an instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of the receiver's functions.

**Power of Court to fix remuneration of receiver**

**425.(1)** The Court may, on application by the liquidator or the official manager of a *society*, or by the SSA, by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of the *society*.

**(2)** The power of the Court to make an order under this section—

- (a) extends to fixing the remuneration for any period before the making of the order or the application for the order;
- (b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and
- (c) if the receiver has been paid or has retained for the receiver's remuneration for any period before the making of the order any amount in excess of that fixed for that period—extends to requiring the receiver or the receiver's personal representatives to account for the excess or such part of the excess as is specified in the order.

**(3)** The power conferred by *subsection* (2)(c) shall not be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

**(4)** The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the SSA, vary or amend an order made under this section.

## SCHEDULE 4 (continued)

**Receiver to enjoy qualified privilege in certain circumstances**

**426.** A receiver of property of a *society* has qualified privilege in respect of—

- (a) a matter contained in a report that the receiver lodges under section 422; or
- (b) a comment that the receiver makes under *section 429(2)(c)*.

**Notification of appointment of receiver**

**427.(1)** A person who obtains an order for the appointment of a receiver of property of a *society*, or who appoints such a receiver under a power contained in an instrument, shall—

- (a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be; and
- (b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the Gazette.

**(2)** Within 14 days after being appointed as a receiver of property of a *society*, a person shall lodge a notice in *a form approved by the SSA* of the address of the person's office.

**(3)** A receiver of property of a *society* shall, within 14 days after a change in the situation of the receiver's office, lodge notice in *a form approved by the SSA* of the change.

**(4)** Where a person appointed as receiver of property of a *society* ceases to act as such, the person shall—

- (a) within 7 days after so ceasing to act, lodge notice that the person has so ceased to act; and
- (b) within 21 days after so ceasing to act, cause notice that the person has so ceased to act to be published in the Gazette.



## SCHEDULE 4 (continued)

**Statement that receiver appointed**

**428.** Where a receiver of property (whether within or outside this jurisdiction or within or outside Australia) of a *society* has been appointed, the *society* shall set out, in every public document, and in every eligible negotiable instrument, of the *society*, after the name of the *society* where it first appears, a statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

**Provisions as to information where receiver appointed**

**429.(1)** In this section—

“**reporting officer**”, in relation to a *society* in respect of property of which a receiver has been appointed, means a person who is—

- (a) in the case of a *society other than a foreign society*—a director or secretary of the *society*; or
- (b) in the case of a foreign *society*—a local agent of the foreign *society*;

on the day of the appointment.

**(2)** Where a receiver of property of a *society* is appointed—

- (a) the receiver shall serve on the *society* as soon as practicable notice of the appointment;
- (b) within 14 days after the *society* receives the notice, the reporting officers shall make out and submit to the receiver a report in *a form approved by the SSA* about the affairs of the *society* as at the day of the appointment; and
- (c) the receiver shall, within one month after receipt of the report—
  - (i) lodge a copy of the report and a notice setting out any comments the receiver sees fit to make relating to the report or, if the receiver does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment;

## SCHEDULE 4 (continued)

- (ii) send to the *society* a copy of the notice lodged in accordance with subparagraph (i); and
- (iii) if the appointment was by or on behalf of the holders of debentures of the *society*, send to the trustees (if any) for those holders a copy of the report and a copy of the notice lodged in accordance with subparagraph (i).

(3) Where notice has been served on a *society* under *subsection* (2)(a), the reporting officers may apply to the receiver or to the Court to extend the period within which the report is to be submitted and—

- (a) if application is made to the receiver—if the receiver believes that there are special reasons for so doing, the receiver may, by notice in writing given to the reporting officers, extend that period until a specified day; and
- (b) if application is made to the Court—if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

(4) As soon as practicable after granting an extension under *subsection* (3)(a), the receiver shall lodge a copy of the notice.

(5) As soon as practicable after the Court grants an extension under *subsection* (3)(b), the reporting officers shall lodge a copy of the order.

(6) Subsections (2), (3) and (4) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where subsection (2) applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in *subsection* (2)(b) and (c) and subsections (3) and (4) to the receiver, subject to subsection (7), include references to the receiver's successor and to any continuing receiver.

(7) Where a *society* is being wound up, this section and section 430 apply even if the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

## SCHEDULE 4 (continued)

**Receiver may require reports**

**430.(1)** A receiver of property of a *society* may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in *a form approved by the SSA*, and submit to the receiver, a report, containing such information as is specified in the notice as to the affairs of the *society* or as to such of those affairs as are specified in the notice, as at a date specified in the notice—

- (a) persons who are or have been officers of the *society*;
- (b) where the *society* was incorporated within one year before the date of the receiver's appointment—persons who have taken part in the formation of the *society*;
- (c) persons who are employed by the *society* or have been so employed within one year before the date of the receiver's appointment and are, in the opinion of the receiver, capable of giving the information required;
- (d) persons who are, or have been within one year before the date of the receiver's appointment, officers of, or employed by, a corporation that is, or within that year was, an officer of the *society*.

**(2)** The receiver may, in a notice under subsection (1), specify the information that the receiver requires as to affairs of a *society* by reference to information required by *the financial institutions legislation* to be included in any other report, statement or notice under *that legislation*.

**(3)** A person making a report and verifying it as required by subsection (1) shall, subject to the regulations, be allowed, and shall be paid by the receiver (or the receiver's successor) out of the receiver's receipts, such costs and expenses incurred in and about the preparation and making of the report as the receiver (or the receiver's successor) considers reasonable.

**(4)** A person shall comply with a requirement made under subsection (1).

**SCHEDULE 4 (continued)**

(5) A reference in this section to the receiver's successor includes a reference to a continuing receiver.

**Receiver may inspect books**

**431.** A receiver of property of a *society* is entitled to inspect at any reasonable time any books of the *society* that relate to that property and a person shall not fail to allow the receiver to inspect such books at such a time.

**Lodging of accounts of receiver**

**432.(1)** A receiver of property of a *society* shall, within one month after the end of the period of 6 months (or such lesser period as the receiver determines) from the date of the receiver's appointment and of every subsequent period of 6 months during which the receiver acts as receiver, and within one month after the receiver ceases to act as receiver, lodge an account in a *form approved by the SSA* showing—

- (a) the receiver's receipts and payments during each such period or, where the receiver ceases to act as receiver, during the period from the end of the period to which the last account related or from the date of the receiver's appointment, as the case requires, up to the date of the receiver so ceasing to act;
- (b) except in the case of the first account lodged under this subsection—the aggregate amount of receipts and payments during all preceding periods since the receiver's appointment; and
- (c) where the receiver has been appointed under a power contained in an instrument—the amount (if any) owing under that instrument—
  - (i) in the case of the first account—at the time of the receiver's appointment and at the end of the period to which the account relates; and
  - (ii) in the case of any other account—at the end of the period to which the account relates;

## SCHEDULE 4 (continued)

and the receiver's estimate of the total value, at the end of the period to which the account relates, of the property of the *society* that is subject to the instrument.

(2) The SSA may, of its own motion or on the application of the *society* or a creditor of the *society*, cause the accounts lodged in accordance with subsection (1) to be audited by a registered company auditor appointed by the SSA and, for the purpose of the audit, the receiver shall furnish the auditor with such books and information as the auditor requires.

(3) Where the SSA causes the accounts to be audited on the request of the *society* or a creditor, the SSA may require the *society* or creditor, as the case may be, to give security for the payment of the cost of the audit.

(4) The costs of an audit under subsection (2) shall be fixed by the SSA and the SSA may if it thinks fit make an order declaring that, for the purposes of *section* 419(1), those costs shall be deemed to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with *section* 419 as if they were such a debt.

(5) A person shall comply with a requirement made under this section.

**Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

**433.(1)** (*omitted*)

(2) This section applies where—

- (a) a receiver is appointed on behalf of the holders of any debentures of a *society* that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a *society*, of any property comprised in or subject to a floating charge; and
- (b) at the date of the appointment or of the taking of possession or assumption of control (in this section called the “**relevant date**”)—
  - (i) the *society* has not commenced to be wound up voluntarily;

## SCHEDULE 4 (continued)

and

- (ii) the *society* has not been ordered to be wound up by the Court.

(3) *The receiver or other person taking possession or assuming control of property of the society shall pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures—*

- (a) *first, any amount that in a winding up of a company is payable in priority to unsecured debts pursuant to section 562 of the Corporations Law;*
- (b) *next, if an auditor of the society had applied to the SSA under section 281(6) of the Code for consent to his, her or its resignation as auditor and the SSA had refused that consent before the relevant date—the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;*
- (c) *subject to subsections (6) and (7), next, any debt or amount that in a winding up of a company is payable in priority to other unsecured debts pursuant to section 556(1)(e), (g) or (h) or 560 of the Corporations Law.*

(4) *(omitted)*

(5) *The receiver or other person taking possession or assuming control of property shall pay debts and amounts payable pursuant to subsection (3)(c) in the same order of priority as is prescribed by Division 6 of Part 5.6 of the Corporations Law in respect of those debts and amounts.*

(6) *If an auditor of the society had applied to the SSA under section 281(6) of the Code for consent to his, her or its resignation as auditor and the SSA had, before the relevant date, refused that consent, a receiver shall, when property comes to the receiver's hands, before paying any debt or amount referred to in subsection (3)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision*

## SCHEDULE 4 (continued)

has not already been made under this subsection.

(7) If an auditor of the *society* applies to the *SSA* under section 281(6) of the *Code* for consent to his, her or its resignation as auditor and, after the relevant date, the *SSA* refuses that consent, the receiver shall, in relation to property that comes into the receiver's hands after the refusal, before paying any debt or amount referred to in subsection (3)(c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver's hands, being fees and expenses in respect of which provision has not already been made under this subsection.

(8) A receiver shall make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subsection (6) or (7) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

(9) For the purposes of this section the references in Division 6 of Part 5.6 of the *Corporations Law* to the relevant date shall be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

**Enforcement of duty of receiver to make returns**

**434.(1)** If a receiver of property of a *society*—

- (a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the receiver, by any member or creditor of the *society* or trustee for debenture holders, of a notice requiring the receiver to do so; or
- (b) who has been appointed under a power contained in an instrument has, after being required at any time by the liquidator of the *society* so to do, failed to render proper accounts of, and to vouch, the receiver's receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator;

## SCHEDULE 4 (continued)

the Court may make an order directing the receiver to make good the default within such time as is specified in the order.

(2) An application under subsection (1) may be made—

- (a) if *subsection (1)(a)* applies—by a member or creditor of the *society* or by a trustee for debenture holders; and
- (b) if *subsection (1)(b)* applies—by the liquidator of the *society*.



## SCHEDULE 5

### OFFICIAL MANAGEMENT

section 30

**(Pt 5.3 of the Corporations Law as applied to a society by s 339 of the Code)<sup>8</sup>**

#### **Interpretation**

**435.(1)** In this *Schedule*—

**“special notice”**, in relation to a meeting of creditors of a *society*, means notice of the meeting sent by post to each of the creditors and posted not less than 14 days and not more than 21 days before the date of the meeting.

**(2)** For the purposes of this *Schedule*, a special resolution shall be deemed to have been passed at a meeting of creditors of a *society* if the resolution is agreed to by a majority in number of the creditors present and voting, either in person or by proxy, being a majority whose debts against the *society* amount in the aggregate to at least 75% of the total amount of the debts of the creditors of the *society* present and voting, either in person or by proxy, at the meeting.

**(3)** A creditor of the *society*, being a related body corporate, is not entitled to vote as a creditor on a special resolution moved at a meeting of creditors of the *society* convened under this *Schedule*.

**(4)** Subject to subsection (3), nothing in this *Schedule* affects the rights of a secured creditor of the *society*.

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<sup>8</sup> Textual modification is indicated by italic script.

## SCHEDULE 5 (continued)

**Power of *society* to call meeting of creditors to appoint official manager**

**436.(1)** Where it is resolved by the majority of the directors of a *society* present at a meeting of the directors specially convened for the purpose that the *society* is unable to pay its debts as and when they become due and payable, the *society* may, or, where the *society* is requested in writing to do so by a creditor of the *society* who has a judgment against the *society* unsatisfied to the extent of at least \$1 000, the *society* shall, convene a meeting of its creditors in accordance with this section for the purpose of placing the *society* under official management and appointing an official manager of the *society*.

**(2)** A meeting of creditors of a *society* for the purposes of this section shall be convened by giving notice of the meeting in accordance with this section to the creditors of the *society*.

**(3)** The notice referred to in subsection (2) shall be given by the *society* within—

- (a) 35 days after the passing of the resolution, or the receipt by the *society* of the request, referred to in subsection (1); or
- (b) such further period as the SSA allows where, in the opinion of the SSA, the *society* would not be able to give the notice within the time specified in paragraph (a).

**(4)** The *society* shall, at least 7 days before the end of the period within which the notice referred to in subsection (2) is required to be given, prepare a report in *a form approved by the SSA* as to the affairs of the *society* made up to a date not earlier than the date of the passing of the resolution, or the receipt by the *society* of the request, referred to in subsection (1).

**(5)** Each director of the *society* shall furnish to the *society* a certificate under his or her hand certifying whether the report prepared in accordance with subsection (4) does or does not, to the best of his or her knowledge, information and belief, give a true and fair view of the state of affairs of the *society* as at the date to which it is made up and, subject to subsection (8), a *society* shall be deemed to have failed to comply with subsection (4) unless each director has furnished to the *society* such a certificate.

**(6)** Where a director certifies that to the best of his or her knowledge,

## SCHEDULE 5 (continued)

information and belief the report does not give a true and fair view of the state of affairs of the *society*, the director shall also state in the certificate the grounds on which he or she formed that opinion.

(7) A director of a *society* shall not furnish a certificate under subsection (5) concerning a report prepared in accordance with subsection (4) unless he or she has made such enquiries as are reasonably necessary to determine whether the report does or does not give a true and fair view of the state of affairs of the *society* as at the date to which it is made up.

(8) Where the SSA is satisfied that it is impracticable for a *society* to obtain the certificate referred to in subsection (5) from a director of the *society*, the SSA may exempt the *society* from the obligation to obtain the certificate from that director.

(9) For the purposes of subsection (2), notice of a meeting of creditors of a *society* shall be given by—

- (a) sending by post to each of the creditors a notice, in a form approved by the SSA; and
- (b) publishing a copy of that notice in each State in which the *society* carries on business or has carried on business at any time during the 2 years immediately preceding the passing of the resolution, or the receipt by the *society* of the request, referred to in subsection (1), in a daily newspaper circulating generally in that State;

not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting.

(10) Subject to subsection (11), the *society* shall attach to every notice posted in accordance with subsection (9)—

- (a) a summary of the affairs of the *society* in a form approved by the SSA;
- (b) a notice that the report that the *society* is required by subsection (4) to prepare is available for inspection at the registered office of the *society* and that a copy of the report will be

## SCHEDULE 5 (continued)

sent by post to any creditor who makes a request in writing for a copy of the report or will be delivered to any creditor who attends at the registered office of the *society* and requests a copy; and

- (c) a copy of *every* certificate furnished by a director of the *society* in accordance with subsection (5).

(11) The *society* may attach to a notice posted in accordance with subsection (9) a copy of the report prepared in accordance with subsection (4) and, where it so attaches a copy of that report, the *society* is not required to attach the summary and notice referred to in *subsection* (10)(a) and (b).

(12) A meeting of creditors convened under this section shall be convened for a day, time and place convenient to the majority in value of the creditors.

(13) The creditors of the *society* present at the meeting who are entitled to vote on a special resolution moved at the meeting shall appoint a *chairperson* of the meeting.

(14) The *chairperson* so appointed shall at the meeting determine whether the day, time and place of the meeting are convenient to the majority in value of the creditors, and his or her decision is final.

(15) Within 7 days after the first notice convening the meeting is posted to any creditor, the *society* shall lodge with the SSA a copy of that notice and shall attach to the copy a certified copy of the report required to be prepared by the *society* under subsection (4) and a certified copy of each of the certificates furnished by the directors under subsection (5).

(16) If a *society* fails to comply with subsection (1), (4), (10) or (15), or a request referred to in *subsection* (10)(b), the *society* is *not guilty of an offence* but any officer of the *society* who is in default is guilty of an offence.

(17) Any director of a *society* who fails to take all reasonable steps to secure compliance by the *society* with subsection (4) is guilty of an offence.

(18) A director who contravenes, or fails to comply with, subsection (5), (6) or (7) is guilty of an offence.

## SCHEDULE 5 (continued)

**Report as to affairs of *society* to be submitted to meeting of creditors**

**437.(1)** The directors of a *society* that has convened a meeting of creditors under section 436 shall appoint one of their number to attend the meeting.

**(2)** The director so appointed shall attend the meeting and shall—

- (a) submit to the meeting the report prepared in accordance with section 436(4); and
- (b) disclose to the meeting the *society's* affairs and the circumstances leading up to the convening of the meeting.

**(3)** If subsection (1) or (2) is contravened, a person (other than the *society*) who is involved in the contravention contravenes this subsection.

**Power to adjourn meeting**

**438.(1)** A meeting convened under section 436 may by resolution be adjourned from time to time to a time and day specified in the resolution but shall not be adjourned to a day later than 21 days after the day for which the meeting was originally convened.

**(2)** Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

**(3)** Where a meeting is adjourned to a day more than 8 days after the passing of the resolution by which it is adjourned, the *society* shall cause notice of the day, time and place of the resumption of the meeting to be published, at least 7 days before that day, in a daily newspaper circulating generally in the *State* in which the resumed meeting is to be held.

**Power of creditors to place *society* under official management**

**439.(1)** At a meeting of creditors of a *society* convened under section 436, the creditors may, by special resolution—

- (a) resolve that the *society* be placed under official management for a period, beginning on the date of the passing of the resolution and

## SCHEDULE 5 (continued)

ending not more than 3 years from that date, specified in the resolution;

- (b) appoint a person named in the resolution who—
- (i) has consented in writing to act as official manager of the *society*;
  - (ii) is not the auditor of the *society*;
  - (iii) is not an officer of a body corporate that is a mortgagee of property of the *society*; and
  - (iv) has furnished to the *society* a certificate under his or her hand stating that he or she is not an insolvent under administration;

to be the official manager of the *society* during the period of the official management; and

- (c) fix the amount of the salary or other remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this *Schedule*.

(2) The *society* shall—

- (a) within 7 days after the passing of the special resolution referred to in subsection (1)—
  - (i) cause a notice in *a form approved by the SSA* of the passing of the resolution to be lodged with the SSA; and
  - (ii) send by post to each of the creditors and members of the *society* a notice in *a form approved by the SSA* of the passing of the special resolution and the provisions of section 454; and
- (b) within 21 days after the passing of the special resolution, cause notice that the *society* has been placed under official management and of the full name of the official manager to be published in the Gazette.

(3) If the *society* fails to comply with subsection (2), the *society is not guilty of an offence* but any officer of the *society* who is in default is guilty

## SCHEDULE 5 (continued)

of an offence.

(4) A creditor to whom the *society* owes, or a representative of a group of creditors to whom the *society* owes in the aggregate, more than 5% of the total unsecured debts of the *society* may, within 14 days after the appointment of a person as official manager of the *society* under subsection (1) of this section or *section* 456(3), apply to the Court for an order terminating the appointment.

(5) Where, on an application under subsection (4), the Court is of the view that the person is not suitable to be the official manager of the *society*, the Court may make an order—

- (a) terminating the person's appointment; and
- (b) appointing as official manager a registered company auditor (other than the auditor of the *society*) who has consented in writing to act as official manager.

(6) Where under subsection (5) the Court has made an order appointing a person to be the official manager of a *society*, this *Schedule* applies to that person as if the person had been appointed official manager of the *society* at a meeting of creditors under subsection (1) on the date of the order.

(7) Where the Court makes an order under subsection (5), the person obtaining the order shall—

- (a) within 7 days after the making of the order, lodge with the SSA notice in a *form approved by the SSA* of the making of the order and its date; and
- (b) within 7 days after the passing and entering of the order, lodge with the SSA an office copy of the order.

**Appointment of committee of management**

**440.(1)** At a meeting of the creditors of a *society* held under this *Schedule*, the creditors may resolve that a committee of management be appointed for the purposes of this *Schedule*.

(2) A committee of management of a *society* shall consist of 5 natural

## SCHEDULE 5 (continued)

persons, of whom 3 shall be appointed by the creditors of the *society* by special resolution and 2 shall be appointed by the members of the *society* at a general meeting of the *society*.

(3) A person is not eligible to be appointed a member of a committee of management of a *society* unless the person is—

- (a) in the case of an appointment by the creditors of the *society*—
  - (i) a creditor of the *society*;
  - (ii) the attorney of a creditor of the *society* by virtue of a general power of attorney given by the creditor; or
  - (iii) a person authorised in writing by a creditor of the *society* to be a member of the committee of management; or
- (b) in the case of an appointment by the members of the *society*—
  - (i) a member of the *society*;
  - (ii) the attorney of a member of the *society* by virtue of a general power of attorney given by the member; or
  - (iii) a person authorised in writing by a member of the *society* to be a member of the committee of management.

**Notice of appointment and address of official manager**

**441.(1)** A person who has been appointed official manager of a *society* shall—

- (a) within 7 days after the date of his or her appointment, lodge notice in *a form approved by the SSA* of his or her appointment as official manager and of the address of his or her office; and
- (b) within 14 days after any change in the situation of his or her office, lodge notice in *a form approved by the SSA* of the change.

(2) A person shall—

- (a) within 7 days after his or her resignation or removal from office as official manager of a *society*, lodge notice in *a form approved by the SSA* of his or her resignation or removal; and



## SCHEDULE 5 (continued)

- (b) within 21 days after his or her resignation or removal from office as official manager of a *society*, cause notice of his or her resignation or removal to be published in the Gazette.

**Effect of resolution**

**442.(1)** Subject to section 454, where a special resolution placing a *society* under official management has been duly passed by the creditors of the *society* under *section* 439(1)—

- (a) the *society* is under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this *Schedule*;
- (b) the directors of the *society* cease to hold office;
- (c) the person appointed official manager of the *society* shall assume, and is responsible for, the management of the *society* and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the *society*; and
- (d) the affairs of the *society* shall be conducted subject to this *Schedule*.

**(2)** The official manager shall be *chairperson* of any meeting of the *society*, of its creditors or of the creditors and members of the *society* that is held or resumed while he or she holds office as official manager.

**Six-monthly meeting of creditors and members**

**443.(1)** Subject to subsection (2), within 2 months after the end of the period of 6 months beginning on the date of his or her appointment as official manager and of each subsequent period of 6 months, or, if the *SSA*, at any time before the end of any such period, requires or permits him or her to do so in respect of a lesser period specified by the *SSA*, within 2 months after the end of the period so specified, the official manager of a *society* shall—

- (a) prepare a statement showing the assets and liabilities of the *society*

## SCHEDULE 5 (continued)

as at the last day of the period and a report containing such other information as he or she thinks necessary to enable the creditors and members of the *society* to assess the financial position of the *society* as at the last day of the period;

- (b) convene a meeting of the creditors and members of the *society* to consider the statement and report; and
- (c) cause the statement and report to be laid before the creditors and members at that meeting.

(2) Where under subsection (1) the SSA has required or permitted the preparation of a statement and report in respect of a period of less than 6 months, the next period of 6 months shall commence at the end of that lesser period.

(3) The official manager of a *society* shall attach to each statement referred to in subsection (1)—

- (a) a statement signed by him or her; and
- (b) *a statement signed by the auditor;*

stating in each case whether or not, in the opinion of the person by whom the statement is signed, the statement referred to in subsection (1) is drawn up so as to give a true and fair view of the affairs of the *society*.

(4) An auditor of a *society* shall supply to the official manager of the *society* at his or her request a statement he or she requires for the purposes of complying with subsection (3).

(5) The official manager of the *society* shall cause copies of the statement and report referred to in this section to be kept and to be available for inspection by any creditor or member of the *society* at the registered office of the *society*.

(6) The official manager shall—

- (a) give written notice to every creditor and member of the *society* that the statement referred to in subsection (1) has been made up when next sending to the creditors or members any report, notice of meeting, notice of call or dividend relating to the *society*; and

## SCHEDULE 5 (continued)

- (b) in the notice inform creditors and members of the *society* at what address, and between what hours, the statement may be inspected.

(7) Within 7 days after a meeting is held under subsection (1), the official manager shall lodge a notice in *a form approved by the SSA* of the holding of the meeting and of the day on which it was held, together with a copy of each statement and report laid before the creditors and members at that meeting.

(8) Where a quorum is not present at a meeting convened in accordance with subsection (1), the official manager shall, within 7 days after the day for which the meeting was convened or, if the meeting was adjourned and no quorum is present at the adjourned meeting, within 7 days after the day to which the meeting was adjourned, lodge with the SSA—

- (a) a notice stating—
- (i) that the meeting was duly convened and that no quorum was present; or
  - (ii) that the meeting was duly convened and adjourned and that no quorum was present at the adjourned meeting;
- as the case requires; and
- (b) a copy of the statement and a copy of the report prepared in accordance with *subsection (1)(a)*.

(9) Where the statement referred to in subsection (1) is not accompanied by a statement signed by a registered company auditor, the SSA may cause the statement referred to in subsection (1) to be audited by a registered company auditor appointed by the SSA, and, for the purposes of the audit, the official manager shall furnish to the auditor such books and information as the auditor requires.

(10) The costs of an audit under subsection (9) shall be fixed by the SSA and are part of the costs of the official management.

**Stay of proceedings**

**444.(1)** Where a *society* is under official management, no action or other

## SCHEDULE 5 (continued)

civil proceeding against the *society* in a court of this jurisdiction shall, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes, be begun or carried on until the *society* ceases to be under official management.

(2) At any time after a *society* has, in accordance with section 436, convened a meeting of its creditors for the purpose of placing the *society* under official management and before the passing of a special resolution by the creditors under section 439(1) resolving that the *society* be placed under official management, the *society* or any creditor of the *society* may, if any action or other civil proceeding against the *society* in a court of this jurisdiction is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

**Power to extend period of official management**

**445.(1)** The official manager of a *society* shall convene a meeting of creditors of the *society* for a day not earlier than 7 months, and not later than 1 month, before the day on which the period of official management is due to end for the purpose of considering whether or not the period of official management should be extended and, if the creditors think fit, passing a special resolution extending the period of official management for such further period not exceeding 12 months as is specified in the resolution.

(2) If, at a meeting held under section 443 not earlier than 7 months and not later than one month before the day on which the period of official management is due to end, the creditors of the *society* consider whether or not the period of official management should be extended, the official manager shall be taken to have complied with subsection (1).

(3) The meeting referred to in subsection (1) shall be convened by the official manager by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting.

(4) The official manager shall, within 7 days after the passing of a special resolution under subsection (1), lodge a copy of that resolution *with the SSA*.

## SCHEDULE 5 (continued)

**Extension of period of official management**

**446.** Where a special resolution extending the period of official management of a *society* is passed at a meeting convened in accordance with section 445, the *society* continues under official management during the period specified in the resolution unless the official management is further extended or is earlier terminated under this *Schedule*.

**Appointment of official manager not to affect appointment and duties of auditor**

**447.** While a *society* is under official management, the provisions of *the Code* relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply in relation to the *society* and, in the application of those provisions in relation to the *society*, a reference to the directors of a *society* shall be read as a reference to the official manager of the *society*.

**Duties of official manager**

**448.(1)** Subject to *the Code*, the official manager of a *society* shall—

- (a) as soon after his or her appointment as is reasonably practicable, take into his or her custody or under his or her control all the property to which the *society* is or appears to be entitled;
- (b) subject to any direction given pursuant to paragraph (c), conduct the business and management of the *society* in such manner as he or she thinks most economical and most beneficial to the interests of the members and creditors of the *society*;
- (c) comply with any directions of the creditors of the *society* that are agreed to by special resolution at any meeting of creditors of which special notice has been given;
- (d) comply with all requirements *the Code* applicable to the *society* relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on the *society* or on the directors of the *society* by or

## SCHEDULE 5 (continued)

under *the Code*;

- (e) if so directed by the committee of management of the *society* acting under *section* 458(6) or by a creditor or creditors of the *society* to whom the *society* owes at least 10% in value of the total unsecured debts of the *society*, by notice sent by post to each of the creditors, convene a meeting of creditors of the *society*; and
- (f) if a meeting of creditors held under *section* 445(1) does not resolve to extend the period of official management—within 7 days after the conclusion of the meeting, by notice sent by post to each of the members of the *society*, convene a meeting of the members to be held on a day not later than 21 days after the conclusion of the meeting of creditors under *section* 445(1) for the purpose of—
  - (i) reporting to the members accordingly; and
  - (ii) enabling the members, if they think fit, to elect directors of the *society* to take office upon the termination of the period of official management.

(2) A meeting convened under *subsection* (1)(f) shall be deemed to have been properly convened and to be empowered under the memorandum and articles of the *society* to appoint or elect directors, and directors so appointed or elected shall take office on the termination of the period of official management of the *society*.

(3) If at any time the official manager is of the opinion that the continuance of the official management of the *society* will not enable the *society* to pay its debts, he or she shall convene a meeting of the members of the *society* for the purpose of considering and, if the members think fit, passing a special resolution that the *society* be wound up voluntarily.

(4) Where the official manager convenes a meeting of members of the *society* under *subsection* (3), the official manager shall—

- (a) convene a meeting of the creditors of the *society* for the day, or the day next following the day, on which the meeting of members is proposed to be held;

## SCHEDULE 5 (continued)

- (b) cause the notices of the meeting of creditors to be sent by post to the creditors on the same day as the sending of the notices of the meeting of the members; and
- (c) convene the meeting of creditors for a day, time and place convenient to the majority in value of the creditors and give the creditors at least 14 days' notice by post of the meeting.

(5) The official manager shall lay before the meeting of creditors convened in accordance with subsection (4) a report in *a form approved by the SSA* as to the affairs of the *society* made up to a day that is not more than 30 days before the day for which the meeting is convened.

(6) Where, at a meeting of members of a *society* convened under subsection (3), the members pass a special resolution to the effect that the *society* be wound up voluntarily—

- (a) the members shall, at that meeting, nominate a person to be liquidator for the purpose of winding up the affairs, and distributing the property, of the *society*; and
- (b) the creditors may, at the meeting of creditors of the *society* convened under subsection (4), nominate a person to be liquidator for that purpose.

(7) A person nominated by the members of a *society* pursuant to subsection (6) shall, subject to subsections (8) and (9), be the liquidator of the *society*.

(8) Where the members and creditors of a *society* nominate different persons to be the liquidator of the *society*, the person nominated by the creditors shall, subject to subsection (9), be the liquidator of the *society*.

(9) Where the members and creditors of a *society* nominate different persons to be the liquidator of the *society*, the Court may, on the application of a member or creditor of the *society* made within 7 days after the day on which the nomination was made by the creditors, by order, direct that the person nominated by the members be the liquidator of the *society* or that the persons nominated by the members and creditors, respectively, be jointly the liquidators of the *society*.

## SCHEDULE 5 (continued)

(10) On the appointment of a liquidator the *society* ceases to be under official management.

(11) The person who, immediately before the appointment of the liquidator, was the official manager of the *society* shall, within 7 days after the holding of the later of the meetings referred to in subsections (3) and (4) lodge *with the SSA*, a notice in a form approved by the SSA of the holding of the meetings and the dates of the meetings, being a notice that has attached to it a copy of the report referred to in subsection (5).

**Undue preferences in the case of official management**

**449.(1)** A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a *society* which, if it had been made or incurred by a natural person, would, in the event of his or her becoming a bankrupt, be void as against the trustee in the bankruptcy, is, if the *society* is placed under official management, void as against the official manager.

(2) Where—

- (a) a creditor of a *society* has issued execution against the property of the *society* or has instituted proceedings to attach a debt due to the *society* or to enforce a charge, or a charging order, against property of the *society*; and
- (b) the creditor would, if the execution or proceedings had been issued or instituted in relation to a debt due by a natural person who subsequently became a bankrupt, be required to pay the amount (if any) received by the creditor as a result of the execution or proceedings to the trustee in the bankruptcy;

the creditor shall, in the event of the *society* being placed under official management, pay the amount (if any) received as a result of the execution or proceedings, less the taxed costs of the execution or proceedings, to the official manager.

(3) Where a creditor has paid to the official manager of a *society* an amount in accordance with subsection (2), that creditor shall be taken to be an unsecured creditor of the *society* for the amount owed to him, her or it by



## SCHEDULE 5 (continued)

the *society* as if the execution or proceedings had not been issued or instituted.

(4) For the purposes of this section, the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person and the date on which a person becomes a bankrupt is the date on which the *society* commences to be under official management.

**Application and disposal of property during official management**

**450.(1)** The official manager of a *society* may sell or otherwise dispose of any property of the *society* in the ordinary course of the business of the *society*.

(2) The official manager of a *society* may sell or otherwise dispose of any property of the *society* otherwise than in the ordinary course of the business of the *society* if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the *society* during the period of official management does not exceed \$5 000.

(3) The official manager of a *society* may, with the consent of the committee of management, sell or otherwise dispose of any property of the *society* otherwise than in the ordinary course of the business of the *society* if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the *society* during the period of official management does not exceed \$20 000.

(4) The official manager of a *society* may—

- (a) with the leave of the Court; or
- (b) with the consent of the creditors given by a special resolution passed at a meeting of the creditors of which special notice has been given, being a notice that set out the intention to propose, as a special resolution, a resolution for the sale or disposal, or the mortgage or charge, of that property;

sell or otherwise dispose of, or mortgage or charge, any property of the

## SCHEDULE 5 (continued)

*society.*

(5) The money of the *society* that becomes available to the official manager of the *society* during the period of the official management shall be applied by him or her in the following order—

- (a) first, in the payment of the costs of the official management, including the remuneration of the official manager, the deputy official manager (if any) and the auditor of the *society*;
- (b) next, in discharge of the liabilities of the *society* incurred in the course of the official management;
- (c) next, in discharge of any other liabilities of the *society*.

(6) Subject to subsection (5), the liabilities of the *society* referred to in subsection (5)(c) shall be discharged as if those liabilities were liabilities of a *society being wound up, and the provisions of Parts 5.4, 5.5 and 5.6 of the Corporations Law (as applied by section 342 of the Code) apply, as far as possible, in relation to the discharge of those liabilities.*

**Official manager may apply to Court for directions**

**451.(1)** The official manager may apply to the Court for directions in relation to any matter arising out of the exercise of his or her powers or functions as official manager.

(2) An act done in accordance with a direction given by the Court on application made under subsection (1) shall be deemed to have been properly done for the purposes of *the Code*.

**Certain provisions applicable to official management**

**452.(1)** This section applies where a *society* is under official management.

(2) A sum due to a member in that capacity, whether by way of dividends, profits or otherwise, shall not be treated as a debt of the *society* payable to that member in the case of competition between the member and a creditor who is not a member, but may be taken into account for the

## SCHEDULE 5 (continued)

purpose of the final adjustment of the rights of the members among themselves.

(3) The Court may make such order for inspection of the books of the *society* by creditors and members as the Court thinks just, and any books in the possession, or in the custody or under the control, of the *society* may be inspected by creditors or members accordingly, but not further or otherwise.

(4) Sections 533, 534, 535 and 536 of the *Corporations Law* apply in relation to the *society* as if—

- (a) *the society were a company* being wound up;
- (b) *a reference in any of those provisions to the liquidator of the company were a reference to the official manager of the society*;
- (c) a reference in any of those provisions to contributories were a reference to members of the *society*; and
- (d) the reference in *section 534(1)* to a report lodged under *section 533* were a reference to a report lodged under that section as applied by virtue of this subsection.

**Power of Court to terminate official management and give directions**

**453.(1)** If at any time, on the application of the official manager or of any creditor or member of a *society* or of the *SSA*, it appears to the Court that the purpose for which the *society* was placed under official management has been fulfilled or that, for any reason, it is undesirable that the *society* should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and, upon that date, the official manager ceases to be the official manager of the *society*.

(2) The Court shall not make an order under subsection (1) on an application by a person other than the *SSA* unless at least 7 days notice in writing of the application has been given to the *SSA*.

(3) The Court may, on an application under subsection (1), if the applicant or, where the *SSA* is not the applicant, the *SSA* so requests, grant leave to the person making the request to file an application for the winding up of the *society*.

## SCHEDULE 5 (continued)

(4) On making an order under subsection (1), the Court may also give such directions as it considers fit for the resumption of the management and control of the *society* by its officers, including directions for the convening of a general meeting of members of the *society* to elect directors to take office upon the termination of the official management.

(5) The costs and expenses of any proceeding before the Court under this section and the costs and expenses incurred in convening a meeting of members of the *society* pursuant to an order of the Court under this section shall, if the Court so directs, form part of the costs of the official management of the *society*.

**Resolution to place *society* under official management effective, subject to appeal**

**454.(1)** Where a resolution has been passed under *section* 439(1) determining that a *society* be placed under official management—

- (a) a creditor to whom the *society* owes, or a representative of a group of creditors to whom the *society* owes in the aggregate, an amount that exceeds 5% of the total unsecured debts of the *society*;
- (b) a member holding, or any representative of a group of members holding collectively, at least 10% of the paid-up capital of the *society*; or
- (c) *a member holding, or any representative of a group of members holding collectively, at least 10% of the total voting rights of members having a right to vote at all general meetings;*

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that there is no reasonable prospect of the *society* being rehabilitated or that the resolution is not in the interests of the creditors and members of the *society*, vary or cancel the resolution.

(2) Where the Court makes an order cancelling a resolution, the Court may give such directions as it considers necessary for the resumption of the management and control of the *society* by the persons who were officers of

## SCHEDULE 5 (continued)

the *society* immediately before it was placed under official management.

(3) Upon the cancellation of a resolution by the Court under this section, the *society* ceases to be under official management and the person appointed official manager of the *society* ceases to hold office.

(4) Where the Court makes an order under this section varying a resolution, the resolution has effect, on and from the date of the order, as varied by the order.

(5) Where an order is made under this section, the acts of the official manager before the making of the order are as valid and binding on the *society*, and on the members and creditors of the *society*, as they would have been if the order had not been made.

**Lodgment of office copy of Court order**

**455.(1)** Where the Court makes an order under section 453 (otherwise than on the application of the SSA) or an order under section 454, the person on whose application the order is made shall lodge—

- (a) within 7 days after the order is made—notice in *a form approved by the SSA* of the making of the order and the date of the order; and
- (b) within 7 days of the passing and entering of the order—an office copy of the order.

(2) Where the SSA is an applicant for an order under section 453, the SSA shall enter in its records particulars of the application and, after the passing and entering of the order, an office copy of the *order and section 71(3)(a) of the Code applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the SSA.*

**Termination of appointment and release of official manager**

**456.(1)** The appointment of a person as official manager of a *society* terminates where—

- (a) that person tenders his or her resignation in writing to either—

## SCHEDULE 5 (continued)

- (i) the committee of management appointed pursuant to this *Schedule*; or
- (ii) a meeting of creditors of the *society*;
- (b) a special resolution that the appointment of the person be terminated is passed at a meeting of creditors of the *society* of which special notice stating that the meeting is convened for the purpose of considering such a resolution has been given; or
- (c) the Court makes an order that the appointment of the person be terminated.

(2) The appointment of a person as official manager of a *society* shall be terminated by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the *society* if—

- (a) the official manager becomes an insolvent under administration;
- (b) the official manager becomes incapable, by reason of mental infirmity, of managing his or her affairs;
- (c) having been appointed by an order of the Court under *section 439(5)*, the official manager ceases to be a registered company auditor; or
- (d) the official manager becomes the auditor of the *society*.

(3) Where a vacancy occurs in the office of official manager of a *society*, the committee of management may appoint, or if there is no committee of management, a meeting of creditors of the *society* convened for that purpose by any 2 of their number may by special resolution appoint, as official manager, a person who is qualified for appointment.

(4) A person is qualified for appointment under subsection (3) if the person—

- (a) has consented in writing to act as official manager of the *society*;
- (b) is not an auditor of the *society*;
- (c) is not an officer of a body corporate that is a mortgagee of property of the *society*;

## SCHEDULE 5 (continued)

- (d) has furnished to the committee of management or the *chairperson* of the meeting of creditors, as the case may be, a certificate signed by the person stating that he or she is not an insolvent under administration.

(5) A person appointed official manager under subsection (3) shall assume, and is responsible for, the management of the *society* and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the *society*.

(6) Where the appointment of an official manager terminates or is terminated, until a person is appointed official manager under subsection (3), the powers and functions of the official manager vest in, and the duties of the official manager shall be performed by—

- (a) the deputy official manager;
- (b) if there is no deputy official manager—the committee of management; or
- (c) if there is no deputy official manager and no committee of management—a person appointed by the Court, on the application of a creditor of the *society*, to act as official manager until a person is appointed official manager under subsection (3).

(7) A person who convenes a meeting of creditors of a *society* for the purpose of considering a resolution that the appointment of a person as official manager of the *society* be terminated shall give to the person who is the official manager not less than 14 days written notice of the meeting and of the purpose for which it is being convened.

(8) Where a person who is an official manager of a *society* receives a notice given under subsection (7), he or she shall—

- (a) before the date on which the meeting is to be held, prepare a report showing how the official management of the *society* has been conducted by him or her;
- (b) present the report to the meeting and give such explanations of that report as are reasonably requested by any creditor; and
- (c) within 7 days after the holding of the meeting, lodge with the SSA

## SCHEDULE 5 (continued)

a notice of the holding of the meeting—

- (i) setting out the date on which the meeting was held; and
- (ii) stating whether the resolution for the termination of the appointment of the person as official manager was passed;

together with a copy of the report prepared in accordance with paragraph (a).

**(9)** Where a person (other than a person who has been given notice of a meeting under subsection (7)) ceases to be an official manager of a *society* (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under *section 439(5)*)—

- (a) the person shall, notwithstanding that he or she has ceased to be the official manager, within 14 days after the day on which he or she ceased to be the official manager, prepare a report showing how the official management was conducted by him or her and, for this purpose, he or she has a right of access to the books of the *society*; and
- (b) the person shall, within 28 days after the day on which he or she ceased to be the official manager, convene a meeting of all persons who were creditors of the *society* at the commencement of the official management and all persons who, on the day on which the person ceased to be the official manager, were creditors of the *society*.

**(10)** Notice of the meeting referred to in *subsection (9)(b)* shall be given to the creditors of the *society* by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the date fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting and a copy of the report prepared in accordance with *subsection (9)(a)*.

**(11)** At the meeting of creditors convened under *subsection (9)(b)*, the person who was the official manager of the *society* shall present his or her report to the meeting and shall give such explanations of that report as are reasonably requested by any creditor.



## SCHEDULE 5 (continued)

(12) Within 7 days after the holding of the meeting referred to in *subsection (9)(b)*, the person who was the official manager shall lodge *with the SSA* notice of the holding of the meeting and of the date on which it was held, together with a copy of the report prepared in accordance with *subsection (9)(a)*.

(13) At a meeting of creditors convened under *subsection (9)(b)*, 2 creditors constitute a quorum and, if a quorum is not present at the meeting, the person who was the official manager shall, within 7 days after the day for which the meeting was convened, lodge *with the SSA*—

- (a) a notice stating that the meeting was duly convened and that no quorum was present; and
- (b) a copy of the report prepared in accordance with *subsection (9)(a)*.

(14) If the meeting is not held on the day for which it is convened under *subsection (9)(b)*, the person who was official manager shall, within 7 days after that day, lodge *with the SSA*—

- (a) a notice stating that the meeting was not held on that day; and
- (b) a copy of the report prepared in accordance with *subsection (9)(a)*.

(15) The expenses incurred by a person who was an official manager of a *society* in connection with the preparation of a report in accordance with *subsection (8)(a)* form part of the costs of the official management.

(16) The expenses incurred by a person who was official manager of a *society* in connection with the preparation of a report in accordance with *subsection (9)(a)* and in relation to the convening and holding of the meeting in accordance with *subsection (9)(b)* form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

(17) Subject to *subsection (18)*, where a person ceases to be the official manager of a *society* (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under *section 439(5)*), the adoption by a meeting of creditors of the *society* of the report prepared by him or her under *subsection (8)(a)* or *(9)(a)*, as the case requires, and of his or her explanations, discharges him or her from all

## SCHEDULE 5 (continued)

liability in respect of any act or omission by him or her in the management of the *society* or otherwise in relation to his or her conduct as official manager.

(18) The adoption by a meeting of creditors of a *society* of a report prepared in accordance with *subsection* (8)(a) or (9)(a) by a person who has ceased to be the official manager of the *society* and of any explanations of the person in relation to the report does not—

- (a) discharge the person from the liabilities referred to in *subsection* (17) if the adoption was obtained by fraud or by suppression or concealment of a material fact; or
- (b) discharge the person from a liability to which, by virtue of a law other than *the Code*, he or she would be subject in respect of any negligence, default, breach of trust or breach of duty committed by him or her in relation to the *society*.

(19) If the report prepared by a person in accordance with *subsection* (8)(a) or (9)(a) and the explanations of the report are not adopted by a meeting of creditors within 2 months after—

- (a) in the case of a report prepared in accordance with *subsection* (8)(a)—the date of the meeting to which the report was presented; or
- (b) in the case of a report prepared in accordance with *subsection* (9)(a)—the date on which notice of the meeting convened in accordance with *subsection* (9)(b) was given to the creditors of the *society*;

the person may apply to the Court for an order of release.

(20) If a person who was official manager of the *society* complies with *subsection* (13), he or she may apply to the Court for an order of release.

(21) On an application under *subsection* (19) or (20), the Court may, if it thinks fit, make an order releasing the applicant from liability for acts or omissions by him or her in the management of the *society* and such an order has the same effect as the adoption of a report and explanations has under *subsection* (17).

## SCHEDULE 5 (continued)

(22) Where the Court makes an order under subsection (21), it may by order direct that any costs or expenses incurred by the applicant in connection with the application shall form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

(23) Where the Court makes an order under subsection (21), the person who was the official manager shall lodge with the SSA an office copy of the order within 7 days after the passing and entering of the order.

**Notification that *society* is under official management**

**457.** A *society* that is under official management shall set out, in every public document, and in every eligible negotiable instrument, of the *society*, after the name of the *society* where it first appears, the expression “under official management”.

**Functions of committee of management; appointment of deputy official manager**

**458.(1)** The functions of the committee of management of a *society* appointed under this *Schedule* are to assist and advise the official manager of the *society* in relation to any matters concerning the management of the *society* on which he or she requests the advice and assistance of the committee.

(2) Either the committee of management of a *society* or a meeting of creditors of a *society* convened by the official manager—

- (a) may appoint a person who—
  - (i) has consented in writing to act as deputy official manager of the *society*;
  - (ii) is not the auditor of the *society*;
  - (iii) is not an officer of a body corporate that is a mortgagee of property of the *society*; and
  - (iv) has furnished to the official manager a certificate under his or

## SCHEDULE 5 (continued)

her hand stating that he or she is not an insolvent under administration;

to be a deputy official manager of the *society*;

- (b) may remove the deputy official manager from office and may, if the committee of management or the meeting of creditors, as the case may be, considers it is necessary, appoint another person to be deputy official manager in his or her place; and
- (c) may determine the amount of the salary or other remuneration of the deputy official manager.

(3) In the absence of the official manager of a *society*, a deputy official manager shall, subject to any written directions given to him or her by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager.

(4) A person who is appointed deputy official manager of a *society* shall, within 14 days after his or her appointment, lodge with the SSA a notice in a form approved by the SSA of his or her appointment as deputy official manager and of the address of his or her office and, in the event of any change in the situation of his or her office, he or she shall, within 14 days after the change, lodge with the SSA notice in a form approved by the SSA of the change.

(5) A person who ceases to be deputy official manager shall, within 14 days after ceasing to be deputy official manager, lodge with the SSA notice in a form approved by the SSA of his or her ceasing to be deputy official manager.

(6) The committee of management of a *society* may, at any time and from time to time, direct the official manager of the *society* to convene a meeting of the creditors of the *society* or a meeting of the members of the *society* or a meeting of both creditors and members of the *society*, and the official manager shall give effect to the direction.

(7) Subject to this section and the regulations, the provisions of sections 549 and 550 of the *Corporations Law* apply with respect to a committee of management of a *society*, the proceedings of and vacancies in a committee of management of a *society*, and the removal of members of

## SCHEDULE 5 (continued)

the committee of management of a *society*, and shall so apply as if—

- (a) a reference in any of those provisions to the committee of inspection or to the committee were a reference to the committee of management;
- (b) a reference in any of those provisions to a member of the committee were a reference to a member of the committee of management;
- (c) a reference in any of those provisions to the liquidator were a reference to the official manager of the *society*; and
- (d) a reference in any of those provisions to a contributory were a reference to a member of the *society*.

## SCHEDULE 6

### SUBSTANTIAL SHAREHOLDINGS

section 13

(Corporations Law, Ch 6, Pt 6.7 as applied to societies under s 196 of the Code)<sup>9</sup>

#### *Definitions*

*707. In this Schedule—*

*“associate” has the meaning given by section 190 of the Act.*

*“entitlement” has the meaning given by section 188 of the Act.*

*“relevant interest” has the meaning given by section 189 of the Act.*

#### *Substantial shareholding*

**708.(1)** For the purposes of this *Schedule*, a person has a substantial shareholding in a *society* if, and only if, the person is entitled to not less than the prescribed percentage of—

- (a) where the *shares* in the *society* are not divided into 2 or more classes—those *shares*; or
- (b) where the *shares* in the *society* are divided into 2 or more classes—the shares in one of those classes.

**(2)** For the purposes of this *Schedule*, the *shares* in a *society* to which a person is entitled do not include *shares* in which an associate of the person has a relevant interest if a certificate issued by the SSA to that associate under subsection (3) in respect of those shares is in force.

**(3)** The SSA may issue to a person a certificate declaring that specified

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<sup>9</sup> Textual modifications are indicated by italic script.

## SCHEDULE 6 (continued)

shares in which that person has a relevant interest are to be disregarded for the purpose of ascertaining the *shares* to which another person specified in the certificate is entitled, and may, by written notice to the first mentioned person, revoke the certificate.

(4) For the purposes of this *Schedule*, a person who has a substantial shareholding in a *society* is a substantial shareholder in that *society*.

(5) In this section—

**“prescribed percentage”** means—

- (a) subject to paragraph (b), 5%; or
- (b) where another percentage is prescribed by regulations in force for the time being for the purposes of this section—that other percentage.

(6) For the purposes of this *Schedule*, a notifiable change in the entitlement of a person to shares in a *society* shall be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests of the person, or in the relevant interest or relevant interests of an associate of the person, in *shares* in the *society*.

(7) For the purposes of subsection (6), but without limiting the generality of that subsection, where a person acquires, or disposes of, *shares* in a *society*, a change in the relevant interest or relevant interests of the person in *shares* in the *society* shall be deemed to occur.

(8) For the purposes of this *Schedule*—

- (a) a person who becomes required to give notice under *section 709*(1) or (2) shall be taken to have become, at the time when the person became a substantial shareholder in the *society*, required to give a substantial shareholding notice to the *society*; and
- (b) a person who becomes required to give a notice under *section 710*(1) or (2) shall be taken to have become, immediately after the change referred to in *section 710*(1)(a) or (2)(a), as the case may be, required to give a substantial shareholding notice to the *society*.

## SCHEDULE 6 (continued)

**Substantial shareholder to notify *society* of interests**

**709.(1)** A person who is a substantial shareholder in a *society* shall give a written notice to the *society* in accordance with this section.

**(2)** *(omitted)*

**(3)** A notice by a person under subsection (1) shall—

(a) *be in a form approved by the SSA;*

(b) state—

(i) the person's name and address; and

(ii) *particulars* of the shares in the society in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder); and

(iii) *particulars* of each such interest;

(iv) *particulars* of any agreement, or any other circumstances, because of which the person or the associate acquired that interest or has that interest; and

(v) such other particulars (if any) as are required by the SSA;

(c) be accompanied by *any documents required by the SSA*.

**(4)** A person required to give a notice under subsection (1) shall give the notice before the end of 2 business days after the day on which that person becomes aware of the relevant interest or interests because of which the person is a substantial shareholder.

**(5)** The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the end of the period referred to in subsection (4).

**Substantial shareholder to notify *society* of changes in interests**

**710.(1)** Where—



## SCHEDULE 6 (continued)

- (a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a *society*; and
- (b) immediately before the change, the person was a substantial shareholder in the *society*;
- (c) immediately after the change, the person is a substantial shareholder in the *society* and is entitled to a percentage of the shares in a class of *shares* in the *society* that is greater than, or less than, by 1% or more of the shares in that class, the percentage of the shares in that class to which the person was entitled at the time (in this section called the “**relevant time**”) when the person last became required to give a substantial shareholding notice to the *society*;

the person shall give a notice to the *society* in accordance with this section.

(2) (*omitted*)

(3) A notice by a person under subsection (1) shall—

- (a) *be in a form approved by the SSA*;
- (b) set out the person’s name;
- (c) set out, in relation to each notifiable change in the entitlement of the person to shares in the *society* (not being a prescribed change) that occurred during the period beginning at the relevant time and ending immediately after the time referred to in subsection (1)(a)—
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
  - (ii) the date of the change and *particulars* of the change; and
  - (iii) *particulars* of any agreement, or any other circumstances, because of which the change occurred; and
- (d) be accompanied by *any documents required by the SSA*.

(4) A person required to give a notice under subsection (1) shall give the

## SCHEDULE 6 (continued)

notice before the end of 2 business days after the day on which that person becomes aware of the change referred to in *subsection (1)(a)*.

**Person who ceases to be a substantial shareholder to notify *society***

**711.(1)** A person who ceases at a particular time (in this section called the “**relevant time**”) to be a substantial shareholder in a *society* shall give a notice to the *society* in accordance with this section.

(2) (*omitted*)

(3) A notice by a person under subsection (1) shall—

- (a) *be in a form approved by the SSA*;
- (b) set out the person’s name;
- (c) set out, in relation to each notifiable change in the entitlement of the person to shares in the *society* (not being a prescribed change) that occurred during the period beginning at the time when the person last became required to give a substantial shareholding notice to the *society* and ending at the relevant time—
  - (i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;
  - (ii) the date of the change and *particulars* of the change; and
  - (iii) *particulars* of any agreement, or any other circumstances, because of which the change occurred;
- (d) set out the date on which the person ceased to be a substantial shareholder in the *society* and particulars of any agreement, or any other circumstances, because of which the person ceased to be a substantial shareholder in the *society*; and
- (e) be accompanied by *any documents required by the SSA*.

(4) A person required to give a notice under subsection (1) shall give the notice before the end of 2 business days after the day on which the person becomes aware that the person or an associate has ceased to have a relevant

## SCHEDULE 6 (continued)

interest or relevant interests in a share or shares in the *society* to the extent necessary to make the person a substantial shareholder in the *society*.

***Circumstance to be stated***

**712.** The circumstances required to be stated in a notice under *this Schedule* include circumstances because of which, having regard to the provisions of *section 189 of the Code*—

- (a) a person has a relevant interest in *shares*; or
- (b) a change has occurred in a relevant interest in *shares*; or
- (c) a person has ceased to be a substantial shareholder in a *society*;

as the case may *require*.

***Copy of notice to be served on SSA***

**713.** A person who gives a notice under *this Schedule* to a society must, on the day on which the person gives the notice, serve a copy of the notice on the SSA.

***Application for extension***

**714.(1)** The SSA may, on the application of a person who is required to give a notice under *this Schedule*, extend, or further extend, the period for giving the notice.

**(2)** An application for an extension under subsection (1) may be made, and the power of the SSA under that subsection may be exercised, notwithstanding that the period referred to in that subsection has ended.

***Society to keep register of substantial shareholders***

**715.(1)** A *society* shall keep a register in which it shall as soon as practicable enter—

- (a) in alphabetical order the names of persons from whom it has

## SCHEDULE 6 (continued)

received notices under section 709 or a corresponding previous law; and

- (b) against each name so entered, the information given in the notice and, where it has received a notice under section 710 or 711 or a corresponding previous law, the information given in that notice.

(2) The register shall be open for inspection—

- (a) by any member of the *society*—without charge; and
- (b) by any other person—on payment for each inspection of such amount, not exceeding \$5, as the *society* requires or, where the *society* does not require the payment of an amount, without charge.

(3) A person may request a *society* to give *the* person a copy of the register or any part of the register and, where such a request is made, the *society* shall send the copy to that person—

- (a) if the *society* requires payment of an amount not exceeding \$5 plus \$0.50 for each page or 100 words—before the end of 21 days after the day on which payment of the amount is received by the *society* or within such longer period as the SSA approves; or
- (b) in a case to which paragraph (a) does not apply—before the end of 21 days after the day on which the request is made or within such longer period as the SSA approves.

(4) A *society* is not, because of anything done under this *Schedule*—

- (a) to be taken for any purpose to have notice of; or
- (b) put *on inquiry* as to;

a right of a person to or in relation to a share in the *society*.

**Civil remedy where *Schedule* contravened**

**716.(1)** A person who contravenes section 709, 710 or 711, whether or not the person has been convicted of an offence in respect of the contravention, is liable to pay, to any person who suffers loss or damage as

## SCHEDULE 6 (continued)

a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first mentioned person or to the first mentioned person not being aware of a relevant fact or occurrence.

(2) A person who contravenes section 715 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

(3) If 2 or more persons each contravene section 715 because of the same act or omission, the liability of those persons under subsection (2) of this section in respect of the contravention is joint and several.

## SCHEDULE 7

### POWER TO OBTAIN INFORMATION AS TO BENEFICIAL OWNERSHIP OF SHARES

section 14

(Corporations Law, Ch 6, Pt 6.8 as applied to societies)<sup>10</sup>

#### Definitions

**717.** In this Part—

**“company”** (*omitted*)

**“primary notice”**, in relation to shares in a *society* means a written notice addressed to the holder of the shares requiring the holder to give to the body giving the notice a written statement setting out—

- (a) full particulars of the holder’s relevant interest in the shares and of the circumstances because of which the holder has that interest; and
- (b) so far as is known to the holder—
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;
  - (ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and
  - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

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<sup>10</sup> Textual modification is indicated by italic script.

## SCHEDULE 7 (continued)

**“relevant instructions”**, in relation to shares, means instructions or directions—

- (a) in relation to the acquisition or disposal of the shares;
- (b) in relation to the exercise of any voting or other rights attached to the shares;
- (c) in connection with any other matter relating to the shares.

**“secondary notice”**, in relation to shares in a *society* means a written notice addressed to a person requiring the person to give to the body giving the notice a written statement setting out—

- (a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances because of which the person has that interest; and
- (b) so far as is known to the person—
  - (i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares; and
  - (ii) full particulars of each such interest, and of the circumstances because of which the other person has that interest; and
  - (iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Primary notice**

**718.(1)** The *SSA* may give to the holder of particular *shares* in a *society* a primary notice in relation to those shares.

**(2)** A *society*, or a member of a *society*, may by writing request the *SSA* to give notices under this *Schedule* in relation to specified *shares* in the *society*.

## SCHEDULE 7 (continued)

(3) On receiving a request under subsection (2), the *SSA* shall, unless it considers that in all the circumstances it would be unreasonable to do so, give to the holder of the shares a primary notice in relation to the shares.

(4) A *society* may give to the holder of particular *shares* in the *society* a primary notice in relation to the shares.

**Secondary notice**

**719.(1)** Where the *SSA* receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in a *society*, information that—

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares;

the *SSA*—

- (c) if *section* 718(3) or this subsection required the notice to be given—shall, subject to subsection (2); or
- (d) otherwise—may;

give to the other person a secondary notice in relation to the first mentioned shares.

(2) The *SSA* need not comply with subsection (1) if it considers that in all the circumstances it would be unreasonable to give such a secondary notice to the other person.

(3) Where a *society* receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in the *society*, information that—

- (a) another person has a relevant interest in any of the shares; or
- (b) another person has given relevant instructions in relation to any of the shares;

the *society* may give to the other person a secondary notice in relation to the first mentioned shares.



## SCHEDULE 7 (continued)

**719A.** (*omitted*)**SSA may provide information obtained pursuant to a notice**

**720.** Where the SSA receives information pursuant to a primary notice or secondary notice in relation to shares in a *society*, the SSA—

- (a) in any case—may provide the information to the *society*; and
- (b) if, because of a request made by a person under *section* 718(2), *section* 718(3) or 719(1) required the notice to be given—shall provide the information to the person, other than such of the information as the SSA considers it would be unreasonable in all the circumstances so to provide.

**Request by person to whom notice given**

**721.(1)** A person who receives a primary notice or secondary notice in relation to shares in a *society* may, before the end of 2 business days after the day on which the notice was received, lodge a written request that, for special reasons set out in the request—

- (a) the information should not be given to the body that gave the notice; or
- (b) if the SSA gave the notice—the information, if given to the SSA, should not be provided under *section* 720, or should be so provided only in a particular form; or
- (c) if the *society* gave the notice—the information should only be given to the *society* in a particular form.

**(2)** Where the SSA is satisfied that there are special reasons why—

- (a) particular information should not be given to the body that gave the notice;
- (b) if the SSA gave the notice—particular information, if given to the SSA, should not be provided under *section* 720, or should be so provided only in a particular form; or

## SCHEDULE 7 (continued)

- (c) if the *society* gave the notice—particular information should only be given to the *society* in a particular form;

the SSA may give to the person a certificate referring to the information and stating that—

- (d) the information need not be given to that body; or
- (e) the information, when given to the SSA, will not be provided under section 720, or will be so provided only in a specified form; or
- (f) the information need only be given to the *society* in a specified form;

as the case may be.

(3) Where the SSA is not satisfied as mentioned in subsection (2), the SSA shall, by written notice to the person, refuse the request.

**Compliance with notices**

**722.(1)** A person who receives a primary notice or secondary notice in relation to shares in a *society* shall, unless before the end of 2 business days after the day on which the person receives the notice the person lodges a request under *section 721(1)* in relation to particular information that the notice requires the person to give, comply with the notice before the end of 2 business days after that day.

(2) Where a *society* gives to a person a primary notice or secondary notice in relation to shares in the *society*, the person shall, forthwith after lodging a request under *section 721(1)* in relation to particular information that the notice requires the person to give, notify the *society* in writing of the request.

**Consequences of SSA's decision on a request**

**723.** Within 2 business days after the day on which the SSA notifies a person of its decision on a request that the person lodged under *section 721(1)* in relation to a primary notice or secondary notice in relation

## SCHEDULE 7 (continued)

to shares in a *society*, the person shall—

- (a) if the *SSA* has given to the person pursuant to the request a certificate under *section 721(2)*—
  - (i) except as provided in the certificate, comply with the notice;
  - (ii) if the *society* gave the notice and the certificate states that specified information need only be given to the *society* in a specified form—give the information to the *society* in that form; and
  - (iii) if the *society* gave the notice—give a copy of the certificate to the *society*; or
- (b) otherwise—comply with the notice.

**Fee for complying with a notice given by a *society* under this *Schedule***

**723A.(1)** *The fee that a society is to pay to a person for complying with a notice under this Schedule is \$5.*

**(2)** Where—

- (a) a *society* gives to a person a notice under this *Schedule*; and
- (b) (*omitted*)
- (c) but for this subsection, the person would be required to comply with *section 722(1)* or *723*, in relation to the notice, before the end of a particular period;

the person is to be taken to be required to comply with that *provision* before the end of—

- (d) the period referred to in paragraph (c); or
- (e) the period of 2 business days beginning on the day when the *society* so pays the fee;

whichever ends later.

**(3)** Where—

- (a) because of subsection (2), a *society* pays to a person a fee for

## SCHEDULE 7 (continued)

complying with a notice given to the person by the *society* under this *Schedule*; and

- (b) the person contravenes *section* 722(1) or 723 in relation to the notice;

the *society* may recover from the person as a debt the amount of the fee, even if the person later complies with the notice.

(4) A *society's* rights and remedies under subsection (3) are additional to, and do not prejudice, any other right or remedy of the *society*.

**Register of notices**

**724.(1)** A *society* shall keep in accordance with this section a register of the information received by the *society* under this *Schedule* or a corresponding previous law.

(2) The register shall either contain—

- (a) the name of each holder of *shares* in the *society* to whom the information relates;
- (b) against each such name—
  - (i) the name and address of each other person (if any) who, according to information received by the *society* under this *Schedule* or a corresponding previous law, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances because of which the other person has the interest; and
  - (ii) the name and address of each person who, according to information received by the *society* under this *Schedule* or a corresponding previous law, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and
- (c) in relation to each item of information entered in the register, the date on which the item was so entered;

or be in such other form as the SSA approves.

## SCHEDULE 7 (continued)

(3) The register shall be open for inspection—

- (a) by any member of the *society*—without charge; and
- (b) by any other person—on payment of *such amount*, not exceeding \$5, as the *society* requires or, where the *society* does not require the payment of an amount, without charge.

(4) A person may request a *society* to give to the person a copy of the register or any part of the register and, where such a request is made, the *society* shall send the copy to that person—

- (a) if the *society* requires payment of *an amount* not exceeding \$5 plus \$0.50 for each page or 100 words—before the end of 21 days after the day on which payment of the amount is received by the *society* or within such longer period as the SSA approves; or
- (b) in a case to which paragraph (a) does not apply—before the end of 21 days after the day on which the request is made or within such longer period as the SSA approves.

(5) Information that is required by subsection (2) to be entered in a register shall be so entered by the *society* before the end of 2 business days after the day on which the company receives the information.

**No notice of rights**

**725.** A *society* is not, because of anything done under this *Schedule* or a corresponding previous law—

- (a) to be taken for any purpose to have notice of; or
- (b) put upon inquiry as to;

the right of a person to or in relation to a share in the *society*.

**Civil liability**

**726.(1)** A person who contravenes section 722 or 723 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the

## SCHEDULE 7 (continued)

contravention was due to the inadvertence or mistake of the first mentioned person or to the first mentioned person not being aware of a relevant fact or occurrence.

(2) A person who contravenes section 724 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

(3) If 2 or more persons each contravene section 722, 723 or 724 because of the same act or omission, the liability of those persons under this section in respect of the contravention is joint and several.

**Exceptions to criminal or civil liability**

**727.** A person—

- (a) is not guilty of an offence by virtue of a contravention of section 722 or 723; and
- (b) is not liable to pay damages under *section 726(1)*;

in respect of a failure to give information that a primary notice or secondary notice in relation to shares in a *society* required the person to give if it is proved that—

- (c) when the notice was received, the information appeared on a register kept by the *society* under section 715 or 724; or
- (d) the giving of the notice was for any reason frivolous or vexatious.

## ENDNOTES

### 1 Index to Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 22 September 1994. Future amendments of the Financial Institutions Regulations 1992 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Table of previous reprints

| Reprint No. | Amendments included   | Reprint date |
|-------------|-----------------------|--------------|
| 1           | to SL No. 182 of 1992 | 1 July 1992  |
| 2           | to SL No. 231 of 1993 | 27 July 1993 |

### 4 List of legislation

#### **Financial Institutions Regulations 1992 SL No. 66**

pubd Gaz 10 April 1992 pp 1849–1982

commenced 1 July 1992 (see s 2)

as amended by—

#### **Financial Institutions Amendment Regulation (No. 1) 1992 SL No. 182**

pubd Gaz 26 June 1992 pp 2064–6

ss 1–2 commenced on date of publication

remaining provisions commenced 1 July 1992 (see s 2)

**Financial Institutions Amendment Regulation (No. 1) 1993 SL No. 231**

notfd Gaz 25 June 1993 pp 1094–9

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 1993 (see s 2)

**Financial Institutions Amendment Regulation (No. 1) 1994 SL No. 304**

notfd Gaz 19 August 1994 pp 1829–31

commenced on date of notification

## 5 List of annotations

**Key to abbreviations in list of annotations**

|        |   |                   |
|--------|---|-------------------|
| amd    | = | amended           |
| Ch     | = | Chapter           |
| cl     | = | clause            |
| def    | = | definition        |
| Div    | = | Division          |
| hdg    | = | heading           |
| ins    | = | inserted          |
| om     | = | omitted           |
| prec   | = | preceding         |
| pres   | = | present           |
| prev   | = | previous          |
| (prev) | = | previously        |
| prov   | = | provision         |
| Pt     | = | Part              |
| RA     | = | Reprints Act 1992 |
| renum  | = | renumbered        |
| Sdiv   | = | Subdivision       |
| sub    | = | substituted       |

Provisions not included in reprint, or amended by  
amendments not included in reprint, are underlined

**Prescribed forms**

s 3A ins 1994 SL No. 304 s 3

**Classes of documents available for inspection**

s 4A ins 1993 SL No. 231 s 4  
amd 1994 SL No. 304 s 4

**Payment to persons required to attend or produce documents—s 76**

s 5A ins 1994 SL No. 304 s 5

**Contingency fund agreements—maximum number of credit unions—s 105B**

s 6A ins 1992 SL No. 182 s 4  
amd 1993 SL No. 231 s 5  
sub 1994 SL No. 304 s 6

**Primary objects of building societies—s 110(1)(b)**

s 6B ins 1994 SL No. 304 s 6



**Separate account of building society's assets acquired in pursuit of its primary objects—s 112(6)**

**s 7** sub 1993 SL No. 231 s 6

**Maximum account-keeping fee for amounts in a suspense account—s 138A(5)**

**s 11A** ins 1994 SL No. 304 s 7

**Maximum fee for issue of a duplicate document—s 219(1)(a)**

**s 16A** ins 1994 SL No. 304 s 8

**Registration of foreign society—s 364**

**s 31** amd 1993 SL No. 231 s 7

**SSA to be notified of certain changes—s 366**

**s 33 prov hdg** amd 1993 SL No. 231 s 8

**Powers in relation to money of members who have died or become of unsound mind—s 412**

**s 37** amd 1993 SL No. 231 s 9

**Transitional provision—name of society**

**s 40A** ins 1992 SL No. 182 s 5

## **SCHEDULE 2—CHARGES**

amd 1993 SL No. 231 s 10