
BUILDING SOCIETIES AMENDMENT ACT 1979

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BUILDING SOCIETIES AMENDMENT

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 No. 20 of 1979
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AN ACT to amend the Building Societies Act 1876 with respect to the amalgamation of building societies and the transfer of the commitments of a building society to another building society.

[16 May 1979]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—This Act may be cited as the *Building Societies Amendment Act 1979*. Short title.

2—(1) Section 1 and this section shall commence on the date of assent to this Act. Commencement.

(2) Except as provided in subsection (1), this Act shall be deemed to have commenced on 1st April 1979.

3—In this Act, the *Building Societies Act 1876** is referred to as the Principal Act. Principal Act

* 40 Vict. No. 5. For this Act, as amended to 1959, see the *Reprint of Statutes (1826-1959)*, Volume 1, page 332, and subsequently amended by No. 39 of 1959, No. 50 of 1962, and No. 55 of 1965.

Amendment of section 3 of Principal Act (Interpretation).

4—Section 3 of the Principal Act is amended—

(a) by omitting “Act.” from the definition of “Registrar” and substituting “Act;”; and

(b) by inserting after the definition of “Registrar” the following definitions:—

“society” means a terminating society or permanent society established under this Act;

“special resolution” has the meaning assigned to that expression by section 3A.

Insertion in Principal Act of new section 3A.

5—After section 3 of the Principal Act, the following section is inserted:—

Special resolutions.

3A—(1) For the purposes of this Act, a special resolution is a reference to a resolution which is passed by a majority of not less than two-thirds of such persons as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at any general meeting of a society of which notice specifying the intention to propose the resolution as a special resolution has been duly given in accordance with the rules of the society.

(2) At any meeting referred to in subsection (1), unless a poll is demanded, a declaration by the chairman that the resolution has been passed by the majority referred to in that subsection shall be conclusive evidence of the fact.

(3) The society shall, within the prescribed time and in the prescribed manner, apply to the Registrar to have the resolution registered as a special resolution and the resolution shall not take effect until registered.

(4) A certificate of registration of any special resolution, or of any alteration of the rules of a society, given by the Registrar shall, in favour of any person lending money to the society on the faith of the certificate or in favour of any guarantor of any such loan, be conclusive evidence that the resolution was duly passed or the alteration in the rules was duly made, as the case may be.

6—Section 30 of the Principal Act is repealed and the following section is substituted:—

Substitution
of section 30
of Principal
Act.

30—(1) Where any two or more societies registered under this Act propose to amalgamate and—

Applications
for approval
of amalga-
mation of
societies.

- (a) the terms of the proposed amalgamation are approved by a special resolution of each of the societies concerned; and
- (b) the proposed amalgamation is approved in writing by the holders of not less than two-thirds of the number of shares in each of those societies,

those societies may, subject to and in accordance with this section, apply to the Registrar to be registered as an amalgamated society with or without any winding up or division of the funds of the societies or any of them.

(2) Where any two or more societies registered under this Act propose to amalgamate and the terms of the proposed amalgamation are approved by a special resolution of each of the societies but the consents in writing of the holders of two-thirds of the number of shares in each of the societies have not been sought or, having been sought, have not been obtained, those societies may, nevertheless, subject to and in accordance with this section, apply to the Registrar to be registered as referred to in subsection (1).

(3) An application under subsection (1) or (2) shall be in or to the effect of the form prescribed and shall be accompanied by—

- (a) two copies of the proposed rules of the amalgamated society; and
- (b) such other particulars as may be prescribed.

(4) Where a society proposes to hold a meeting for the purpose of passing the special resolution referred to in subsection (1) (a) or (2), as the case may be, the society shall attach to or include in the notice of the meeting sent to each of its members a statement, approved by the Registrar, concerning—

- (a) the financial position of the society and that of the other society or societies concerned;
- (b) the interest in the proposed amalgamation of the directors of the society and that of the directors of the other society or societies concerned;

- (c) the compensation or other consideration proposed to be paid to the directors or other officers of the society and of the directors or other officers of the other society or societies concerned;
- (d) the payment to be made to members of the society and of the other society or societies concerned in consideration of the proposed amalgamation; and
- (e) such other matters as the Registrar may direct.

(5) A reference in subsection (4) to directors includes, in the case of a society having a committee of management instead of a board of directors, the members of the committee.

(6) Before making an application under subsection (2), the societies concerned shall give notice of their intention to make the application in such form and manner, at such times, and in such publications as the Registrar may approve or direct and shall, in the notice, invite any person referred to in subsection (7) (a) and (b), if he so wishes, to lodge with the Registrar a notice of objection to the amalgamation.

(7) Where—

- (a) any member of the societies referred to in subsection (6); or
- (b) any other person claiming to be materially affected by the amalgamation,

objects to the amalgamation, he may, within 14 days after the publication of the notice, or, as the case may be, of the last of the notices, in accordance with subsection (6), lodge with the Registrar a notice of objection to the proposed amalgamation and the grounds on which the objection is based.

(8) Where an application made under subsection (1) complies, and the applicants have complied, with this section and the proposed rules of the amalgamated society are in accordance with this Act, the Registrar shall approve the application, but otherwise the application shall be refused.

(9) Where—

- (a) an application made under subsection (2) complies, and the applicants have complied, with this section;

(b) the proposed rules of the amalgamated society are in accordance with this Act; and

(c) the Registrar is, after hearing—

(i) the societies making the application;

(ii) any member of those societies who has lodged a notice of objection to the proposed amalgamation; and

(iii) any other person who has lodged a notice of objection to the proposed amalgamation and who, in the Registrar's opinion, is materially affected by the proposed amalgamation,

of the opinion that it would be proper for the amalgamation to take place,

the Registrar shall approve the application, but otherwise the application shall be refused.

7—After section 30 of the Principal Act, the following sections are inserted:—

Insertion in Principal Act of new sections 30A, 30B, 30C.

30A—(1) Where the Registrar approves an application made under section 30 (1) or (2), he shall, on the surrender to him of the certificates of incorporation of the amalgamating societies or the production of such evidence as to the loss of any of them as he may require—

Issue of certificate of incorporation to amalgamated society and supplementary provisions with respect to vesting and transfer of property.

(a) register the amalgamated society and its rules;

(b) issue a certificate that the society is incorporated as an amalgamated society under this Act;

(c) notify the issue of the certificate in the *Gazette*; and

(d) following the issue of the certificate referred to in paragraph (b), remove from the register the names of the societies that have been amalgamated.

(2) On the issue of the certificate of incorporation under subsection (1), the property of each society that is a party to the amalgamation, by virtue of this section without any conveyance, transfer, or assignment, except as provided in subsections (4) and (5), vests in the amalgamated society.

(3) For the purposes of this section, the property of the societies that are parties to the amalgamation includes all estates and interests in property, whether real or personal or vested or contingent.

(4) Where the property is—

(a) land that is subject to the *Real Property Act 1862*;
or

(b) property a transfer of which is required by any other Act to be registered,

the property does not vest until the appropriate transfer is executed and registered so that the property is duly transferred.

(5) Where the property is property that is only transferable in books kept by a corporation, company, or other body or in a manner directed by or under any Act (whether of this State or not), the property does not vest until it is duly transferred.

(6) If any property does not vest under this section until transfer or registration, the amalgamated society, by virtue of this section—

(a) has the right to call for a transfer of the property to the amalgamated society or to such person as its board of directors or committee of management may direct and to sue for or recover the property; and

(b) in the case of a memorandum of mortgage under the *Real Property Act 1862*, may—

(i) exercise any power conferred on the mortgagee by any Act or by the mortgage; or

(ii) discharge the mortgage as if the amalgamated society were registered as the mortgagee under the mortgage.

(7) Property which is vested in or transferred to the amalgamated society by virtue of or in accordance with this section is subject to any debt, liability, or obligation specially charged on or affecting it.

(8) All debts and liabilities, whether certain or contingent, and whether existing at the time of the issue of the certificate of incorporation of the amalgamated society or capable of arising after that time, to or with which any society that is a party to the amalgamation is at that time liable or charged, shall, by virtue of this section, become and be the debts and liabilities of the amalgamated society.

30B—(1) Subject to this section, a society may, by special resolution, transfer its commitments to another society which undertakes to fulfil those commitments, and a society may—

Transfer of commitments.

- (a) by special resolution; or
- (b) with the consent of the Registrar, by resolution of a general meeting or of the board of directors or committee of management of the society, undertake to fulfil the commitments of another society.

(2) A transfer of commitments between societies under subsection (1) shall not have effect unless—

- (a) the societies have complied with subsection (3) (unless exempted under that subsection);
- (b) the holders of not less than two-thirds of the number of shares of each of the societies have consented in writing to the transfer or the transfer has been approved by the Registrar under subsection (8); and
- (c) the special resolution has been registered by the Registrar.

(3) Where a society proposes to hold a meeting for the purpose of passing the special resolution referred to in subsection (1), the society shall, unless specially exempted by the Registrar, attach to or include in the notice of the meeting sent to each of its members a statement, approved by the Registrar, concerning—

- (a) the financial position of the society and that of the other society concerned;
- (b) the interest in the transfer of commitments of the directors of the society and of the directors of the other society concerned;

(c) the compensation or other consideration proposed to be paid to the directors or other officers of the society and of the directors or other officers of the other society concerned in consideration of the transfer of commitments; and

(d) such other matters as the Registrar may direct.

(4) A reference in subsection (3) to directors includes, in the case of a society having a committee of management instead of a board of directors, the members of the committee.

(5) Where a society has passed a special resolution transferring its commitments to, or undertaking to fulfil the commitments of, another society but the consents in writing of the holders of two-thirds of the number of shares in the first-mentioned society have not been sought, or, having been sought have not been obtained, that society may, subject to subsection (6), apply in writing to the Registrar for approval of the transfer of commitments.

(6) Before a society makes an application under subsection (5), it shall give notice of its intention to make the application in such form and manner, at such times, and in such publications as the Registrar may approve or direct and shall, in the notice, invite any person referred to in subsection (7) (a), (b), and (c), if he so wishes, to lodge with the Registrar a notice of objection to the proposed transfer of commitments.

(7) Where—

(a) any member of the society that has published a notice in accordance with subsection (6);

(b) any member of the other society concerned; or

(c) any other person claiming to be materially affected by the proposed transfer of commitments,

objects to that proposed transfer, he may, within 14 days after the publication of the notice, or, as the case may be, of the last of the notices in accordance with subsection (6), lodge with the Registrar a notice of objection to the proposed transfer of commitments and the grounds on which the objection is based.

(8) Where an application made under subsection (5) complies with this section and the Registrar is, after hearing—

- (a) the society making the application;
- (b) any member of that society or of the other society concerned who has lodged a notice of objection to the transfer to the first-mentioned society of the commitments of that other society; and
- (c) any other person who, in the Registrar's opinion, is materially affected by the proposed transfer of commitments,

of the opinion that it would be proper for the transfer of commitments to be given effect to, the Registrar shall approve the application, but otherwise the application shall be refused.

30C—(1) In this section—

“transferee society” means a society which, under section 30B (1), undertakes to fulfil the commitments of another society; and

“transferor society” means a society which, under section 30B (1), resolved to transfer its commitments to another society which undertakes to fulfil those commitments.

Supplementary provisions with respect to vesting of property in transferee society.

(2) On the registration of the special resolution of a transferor society under section 30B (2) (c), the property of the transferor society, by virtue of this section without any conveyance, transfer, or assignment, except as otherwise provided in this section, vests in the transferee society.

(3) For the purposes of this section, the property of the transferor society includes all estates and interests in property, whether real or personal, vested or contingent.

(4) Where property of the transferor society is—

- (a) land that is subject to the *Real Property Act 1862*;
- or
- (b) property a transfer of which is required by any other Act to be registered,

the property does not vest until the appropriate transfer is executed and registered so that the property is duly transferred.

(5) Where the property of the transferor society is property that is only transferable in books kept by a corporation, company, or other body or in a manner directed by or under any Act (whether of this State or not), the property does not vest until it is duly transferred.

(6) If any property does not vest under this section until transfer or registration, the transferee society, by virtue of this section—

(a) has a right to call for the transfer of the property to it or to such person as its board of directors or, as the case may be, its committee of management may direct and to sue for or recover the property; and

(b) in the case of a memorandum of mortgage under the *Real Property Act 1862*, may—

(i) exercise any power conferred on the mortgagee by any Act, or by the mortgage; or

(ii) discharge the mortgage as if the transferee society were registered as the mortgagee under the mortgage.

(7) Property which is vested in or transferred to the transferee society by virtue of, or in accordance with, this section is subject to any debt, liability or obligation specially charged on or affecting it.

(8) All debts and liabilities, whether certain or contingent, and whether existing at the time of registration of the special resolution of the transferor society under section 30B (2) (c) or capable of arising after that time, to or with which the transferor society is, at that time, liable or charged, shall, by virtue of this section, become and be the debts and liabilities of the transferee society.