

Regulation | Objects & Reasons | **Cases**

ARRANGEMENT OF SECTIONS

Cap. 48. | Law 67 of 1955 S. 62. | Acts 22 of 1967 | 55 of 1968 | 42 of 1969 3rd Sch. | 32 of 1974 | 15 of 1976 | 1 of 1979 1st Sch.
| 3 of 1985 | 3 of 1995 | 27 of 1995 | 42 of 1997

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1. Short title.

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

2. Interpretation.

2. The Court in this Act means the Supreme Court.

3. Incorporation of societies.

3. Any number of persons who desire to establish a building society, may, on having its rules

certified as by this Act provided, obtain from the Deputy Keeper of the Records a certificate of incorporation in the form set out in the First Schedule:

Provided that no society shall be incorporated in a name identical with a then existing society, or so nearly resembling the same as to be calculated to deceive unless such existing society is in course of being terminated or dissolved and consents to such registration.

The society shall supply to any person requiring the same a complete printed copy of the rules, with a copy of the certificate of incorporation appended thereto, and shall be entitled to charge for every such printed copy of rules a sum not exceeding ten cents.

4. Rules.

4. (1) It shall be lawful for the several shareholders of a society from time to time to assemble together, and by majorities of those present to make, ordain and constitute such proper and wholesome rules for the government and guidance of the same, as to the major part of the shareholders of such society so assembled together shall seem meet, so as such rules shall not be repugnant to the express provisions of this Act, and the general laws of the Island; and to inflict and impose such reasonable fines, penalties, and forfeitures upon the several shareholders of such society as shall offend against any such rules, as the shareholders, by such majority present at any such meeting may think fit; which fines, penalties, and forfeitures shall be paid to and for the benefit of the general funds of such society; and also from time to time, in the manner, and by the majorities required by this Act, or by the rules of such society for the time being, to alter and amend such rules as occasion shall require or render desirable, or annul, rescind, or repeal the same, and to make new and other rules for the furtherance of the objects of such society.

(2) The rules of every building society shall set forth -

- (a) the name of the society and chief office or place of meeting for the business of the society;
- (b) the purposes to which the funds of the society are to be applied, and the manner in which they are to be invested;
- (c) the manner of altering and rescinding the rules of the society, and of making additional rules;
- (d) the manner of appointing, remunerating and removing the board of directors or committee of management, auditors and other officers;
- (e) the manner of calling general and special meetings of the members;
- (f) provision for an annual or more frequent audit of accounts and inspection by the auditors of the mortgages and other securities belonging to the society;
- (g) whether disputes between the society and any of its members or any person claiming by or through any member or under the rules, shall be settled by reference to the Court, or to

arbitration;

(h) provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof;

(i) provision for the custody of the mortgage deeds and other securities belonging to the society;

(j) the powers and duties of the board of directors or committee of management and other officers;

(k) the fines and forfeitures to be imposed on members of the society;

(l) the manner in which the stock shall be terminated or dissolved;

(m) the manner in which the stock or funds of the society is or are to be raised;

(n) the terms upon which unadvanced subscription shares are to be issued, the manner in which contributions are to be paid to the society and withdrawn by the members, with tables, where applicable in the opinion of the AttorneyGeneral, showing the amount due by the society for principal and interest respectively;

(o) the terms upon which paidup shares, if any, are to be issued and withdrawn, with tables, where applicable in the opinion of the AttorneyGeneral showing the amount due by the society for principal and interest respectively;

(p) whether preferential shares are to be issued, and if so, within what limits;

(q) the manner in which advances are to be made and repaid, the deductions, if any, for Fire or Life Insurance premiums, and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made, with tables, where applicable in the opinion of the AttorneyGeneral, showing the amount due from the borrower, after each stipulated payment;

(r) the manner in which losses are to be ascertained and provided for;

(s) the manner in which membership is to cease;

(t) whether the society intends to borrow money, and if so, within what limits, not exceeding those prescribed by this Act.

(3) Where any provisions of any rules made pursuant to subsection (1) are inconsistent with the provisions of any regulations made under section 34F of the Bank of Jamaica Act, those regulations shall prevail and the rules shall, to the extent of the inconsistency, be void.

5. Maximum fines.

5. (1) A building society may charge interest on loans.

(2) Subject to subsection (1), no building society shall impose any fine or penalty upon any person who is in arrear in respect of the payment of any subscription to any share in that society or in respect of the payment of any interest on, or the repayment of any principal of, any loan from that society, in excess of one and twothird cents in the dollar or a proportionate part thereof, per month or part of a month on any such arrears, so however, that no fine or penalty shall exceed twenty cents in the dollar.

(3) No building society shall by its rules provide for or permit the imposition of fines or penalties in excess of the rates specified in subsection (2), and so much of the rules of any society as provided for or permit the imposition of fines or penalties in excess of rates under subsection (2) shall be deemed to have been amended so that the maximum fines or penalties which may be charged or imposed shall be the maximum fines or penalties chargeable under subsection (2).

6. Trusts upon which mortgages are to be taken.

6. Any society may, by the rules thereof, or by means of a schedule to such rules, to be certified, and filed as herein mentioned, specify the trusts on which mortgages accepted by them shall be taken and held, and also the powers and privileges which, in all such mortgages, shall be held and enjoyed by the trustees of such society; which trusts, powers, and privileges may, in every such mortgage, be referred to by apt words; and thereupon such trusts, powers, and privileges shall be as absolutely vested in, and shall as fully devolve upon, the trustees for the time being of such society, as if they were fully set out in every such mortgage, and each such society may, in like manner, by its rules, by schedules thereto, provide or set out forms in which mortgages and conveyances to them, and surrenders and releases of mortgages on mortgage terms, and all conveyances by them, may be taken in cases where it is found practicable to adopt such forms.

7. Rules and alterations to be submitted to AttorneyGeneral and copy sent to Record Office when certified. Effect thereof. Procedure where the AttorneyGeneral refuses to certify.

7. Two transcripts of all rules made by any society under this Act, and of all alterations, amendments, rescissions and annullings thereof, or of any of them, shall be signed by three directors, and countersigned by the clerk or secretary of such society, and shall be submitted, within one month from the making thereof respectively, to the AttorneyGeneral, for the purpose of advising and certifying that such rules, amendments, alterations, rescissions, and annullings respectively are calculated to carry into effect the intention and purposes for which such society was formed, and also are in conformity to law, and to the provisions of this Act, and advising and certifying what part or parts of the same respectively are repugnant thereto. When such transcripts have been so certified as aforesaid, one shall be returned to the society and shall be kept by such society, or the proper officer thereof for the time being, and the other transcript shall be forthwith transmitted by the AttorneyGeneral to the Deputy Keeper of the Records, and shall be filed and preserved in the Record Office.

The receipt of such certified transcript shall be an authority to the Deputy Keeper of the Records to register such society by entering its name in the register book mentioned in section 40 (if such society is not already registered) and thereupon such society shall be deemed to be a duly enrolled building society under this Act. The several rules, and all alterations and amendments thereof, certified, transmitted and filed as aforesaid, shall be from the time of the filing thereof, the rules of the society to which they relate until they shall be duly rescinded, annulled or altered, and shall be binding on the several members and officers of the said society, the contributors and subscribers thereto, and all other persons having interest therein, and on their representatives and on all persons claiming on account of a member or under the rules, all of whom shall be deemed and taken to have full notice thereof.

In case the AttorneyGeneral shall refuse to certify any rules or alterations or amendments thereof, it shall then be lawful for the persons or society desirous of having the same certified to submit the same to one of the Judges of the Supreme Court, together with the reasons in writing of the AttorneyGeneral for his said refusal (which reasons the AttorneyGeneral is hereby required on demand to give); and thereupon such Judge may, if he thinks fit, confirm and allow the said rules, alterations or amendments, notwithstanding the refusal of the AttorneyGeneral to certify the same; and thereupon the said Judge shall cause one transcript of the said rules, alterations or amendments, to be sent to the Deputy Keeper of the Records and the other to the society, and on such rules, alterations or amendments being confirmed and allowed by the Judge as aforesaid, the same consequences shall ensue as if the same had been certified by the AttorneyGeneral.

8. Fee to AttorneyGeneral.

8. The AttorneyGeneral shall be entitled to demand and receive for his labour in perusing and certifying such rules, amendments and rescissions a fee of six dollars and thirty cents and no more:

Provided, nevertheless, that no fee shall be allowed to the AttorneyGeneral in respect of any alterations, amendments, or rescissions of any rules upon which one fee shall have been already paid to him within the period of three years.

8A. Licence

8A. (1) A building society shall not commence or carry on business in Jamaica unless it is duly licensed under this Act to do so.

(2) A building society which contravenes subsection (1) is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars and where the offence is continued after conviction the society is guilty of a further offence and liable on summary conviction in a Resident Magistrate's Court to a further penalty not exceeding twenty thousand dollars for each day during which the offence is so continued.

(3) Where a Justice of the Peace is satisfied by information given by an authorized officer that there are reasonable grounds for suspecting that an offence under subsection (1) has been or is being committed by any person and that evidence of the commission of the offence is to be found on any premises specified in the information, he may grant a search warrant to the authorized officer in accordance with subsection (4).

(4) The warrant referred to in subsection (3) shall permit the authorized officer -

(a) to enter (with or without a constable) the premises named in the warrant for the purpose of inspecting and making copies of such books, accounts, records and other documents, cheques and securities (in this subsection referred to as relevant documents), as may be found on those premises; and

(b) to seize and detain the relevant documents and such cash as may be found on the premises, for a period not exceeding ninety days.

(5) Any person who hinders or obstructs an authorized officer or person acting in aid of such officer in the performance of his duties under subsection (4) is guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars and where the offence is continued after conviction he is guilty of a further offence and liable on summary conviction in a Resident Magistrate's Court to a further penalty not exceeding twenty thousand dollars for each day during which the offence is so continued.

(6) In this section "authorized officer" has the same meaning as in section 2 of the Bank of Jamaica Act.

8B. Application for licence

8B. (1) An application for a licence under this Act shall be made to the Minister in such form and manner and shall contain such particulars as may be prescribed, and the Minister may, in his discretion, grant or refuse such application.

(2) Where the Minister thinks necessary he may require an applicant for a licence to furnish additional information and where the application is refused the Minister shall notify the applicant in writing of such refusal and shall afford to that applicant an opportunity to be heard.

(3) A licence shall not be granted to any building society unless the Bank of Jamaica makes a recommendation to the Minister that every person who is a director of the society or who is to perform corporate management functions in the society is a fit and proper person for that purpose, that is to say, he is a person who possesses such qualifications as may be prescribed.

(4) The Minister may make regulations regarding any matter required by this Act to be prescribed.

(5) It shall be a condition of every such licence that the building society to which it is granted shall -

(a) forthwith upon the grant of the licence and thereafter while the licence continues in force, annually on or before each anniversary of such grant, pay the prescribe licence fee to the Accountant-General;

(b) comply with such terms and conditions as may be specified in the licence;

(c) forthwith upon any change in the persons referred to in subsection (3), notify the Minister in writing of that change.

(6) If, upon receipt of a notice referred to in paragraph (c) of subsection (5), the Minister is not satisfied that the persons named therein are fit and proper persons as described in subsection (3), the Minister may require the licensee concerned to take such steps as the Minister may consider necessary to ensure compliance with subsection (3).

(7) The Minister shall by notice in the *Gazette*, publish -

(a) the name of each building society to which a licence is granted under this section; and

(b) any terms and conditions applicable to such licence.

(8) The Minister may make regulations prescribing the fee to be paid in respect of a licence granted under this section.

(9) Where -

(a) pursuant to section 9, two or more building societies unite and become one society; or

(b) pursuant to section 9A, a building society (in this subsection referred to as "the transferor") transfers its engagements to another society; or

(c) pursuant to subsection (1) of section 39B, a building society determines to convert into a company under the Companies Act or to amalgamate with or transfer its engagements to any such company,

the respective existing licences of the societies referred to paragraph (a), the transferor and the society referred to paragraph (c) shall be deemed to be cancelled at -

(i) the date on which the Minister confirms the union or the transfer of engagements in accordance with subsection (4) of section 9B or approves the conversion, amalgamation, or

transfer of engagements in accordance with subsection (1) of section 39B, as the case may be, or as the case may require;

(ii) the date on which the union or the transfer of engagements has obtained the consent of the required number of shareholders pursuant to sub-paragraph as the case may be, or, as the case may require;

9A (3), as the case may be.

9. Societies may unite.

9. (1) Two or more building societies may unite and become one society, with or without any dissolution or division of the funds of such societies, if -

(a) the terms of the union are approved by a special resolution of each of the societies; and

(b) the union either -

(i) obtains the consent in writing of the holders of not less than twothirds of the whole number of shares in each society, whether present or not at general meetings respectively convened for the purpose; or

(ii) is confirmed by the Minister under subsection (4) of section 9B.

(2) Notice of any union of building societies shall be recorded in the Record Office.

9A. Society may transfer its engagements to another.

9A. (1) A building society may by special resolution transfer its engagements to another building society which undertakes to fulfil those engagements; and a building society may

(a) by special resolution; or

(b) with the consent of the Minister, by resolution of a general meeting or of the Board of directors, undertake to fulfil the engagements of another building society.

(2) A building society transferring its engagements under this section shall send notice of the transfer to the Record Office.

(3) A transfer of engagements between building societies shall not have effect unless notice of the transfer has been sent to the Record Office, and -

(a) the holders of not less than twothirds of the whole number of shares of each of the societies have consented in writing to the transfer; or

(b) the transfer has been confirmed by the Minister under subsection (4) of section 9B.

9B. Supplementary provisions.

9B. (1) A building society (in this section referred to as "the relevant society") desiring to-

- (a) unite with one or more other building societies; or
- (b) transfer its engagements to another building society; or
- (c) undertake to fulfil the engagements of another building society,

shall (unless the Minister has by notice in writing exempted it from the provisions of this section) send to each of its members a statement in terms approved by the Minister concerning -

- (i) the financial position of the relevant society and that of the other building society or societies concerned;
- (ii) the interest of the directors of the relevant society in the union or transfer of engagements;
- (iii) the compensation or other consideration proposed to be paid to the directors or other officers of the relevant society, and of the other building society or societies concerned; and
- (iv) the payments (if any) to be made to members of the relevant society, and of the other building society or societies concerned, in consideration of the union or transfer of engagements.

(2) The relevant society may apply to the Minister to confirm the union or transfer of engagements, notwithstanding that the consent in writing of the holders of two-thirds of the whole number of shares of the relevant society has not been obtained.

(3) Notice of the application shall be published in the *Gazette* and at least in one daily newspaper circulating in Jamaica.

(4) The Minister after hearing the relevant society and any other persons appearing to him to have a justifiable interest in the matter, may confirm the union or transfer of engagements, as the case may be.

(5) Notice of the confirmation of a union or transfer of engagements shall be published in the *Gazette* and at least in one daily newspaper circulating in Jamaica.

(6) Application for the confirmation of a union or transfer of engagements shall be accompanied by such fee as may be prescribed by the Minister by order.

(7) The recording of the notice of the union or transfer of engagements by the Record Office, shall operate as an effectual conveyance, transfer and assignment, as at the date of the said recording, of such funds, property and assets of the societies uniting to the united society, or of the society transferring its engagements to the society to which such engagements may be transferred, as may be set forth in the instrument of union or transfer of engagements, without any other conveyance, transfer or assignment whatsoever:

Provided that such union or transfer of engagements shall not affect the rights of any creditor of either or any society uniting or transferring its engagements.

(8) A failure to comply with the provisions of subsection (1) of this section shall not invalidate the union or transfer of engagements; but if the relevant society fails to comply with those provisions, the society, and every officer of the society who is in default shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding three months.

(9) For the purposes of subsection (8) an officer of a society shall be deemed to be in default if he knowingly and wilfully authorizes or permits the default.

9C. Special resolutions.

9C. A resolution of a building society shall be a special resolution for the purposes of this Act when it has been passed by not less than threefourths of the number of the members of the society competent to vote, and voting, in person or by proxy, on a poll on the resolution, at a meeting of the society of which notice specifying the intention to move the resolution as a special resolution has been duly given.

10. Change of name.Cases

10. A building society may change its name by resolution of threefourths of the members present at a meeting called for the purpose:

Provided that the new name is not identical with that of any society previously incorporated and still subsisting, or so nearly resembling the same as to be calculated to deceive, unless such subsisting society is in course of being terminated or dissolved, and consents to such registration. Notice of the change of name shall be sent to the Deputy Keeper of the Records and be registered by him, and he shall give a certificate of registration in the form set out in the First Schedule. Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

11. Change of chief office.

11. Any building society may change its chief office in the manner its rules direct, or if there be

no such direction, then at a general meeting specially called for the purpose, in the manner set forth in the rules of the society; and no alteration of rule shall be necessary upon such change, nor shall the provisions of section 7 apply to such change. Notice of every such change shall be given by the secretary of the society to the Deputy Keeper of the Records within seven days after such change, and shall be registered by him by being recorded in his office, and he shall give a certificate of such registration in the form set out in the First Schedule, and the secretary of the society shall advertise the same for two days in any one of the newspapers published in the parish in which the society has its principal office, and where there is no newspaper published in the parish then in one of the newspapers published in Kingston.

12. Buildings for purposes of society may be purchased or leased.

12. A building society incorporated after the passing of this Act may purchase, build, hire, or take upon lease any building for conducting its business, and may adapt and furnish the same, and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange or let such building, or any part thereof:

Provided that the provisions of this section shall not affect the right of societies established before the fourth day of June, 1897, and which by their rules may have provided for the purchase of freeholds to be sold or rented in accordance with the law then in force.

13. Officers to give security.

13. (1) Every officer of a building society having the receipt or charge of any money, belonging to the society shall, before taking upon himself the execution of his office become bound with one sufficient surety at the least in a bond according to the form set out in the Second Schedule, or give the security of a guarantee society or such other security as the society direct, in such sum as the society require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, and at such times as its rules appoint, or as the society require him to do so.

Officers to account.

(2) Every such officer, his executors or administrators, shall, upon demand made, or notice in writing given or left at his last or usual place of residence, give in his account as may be required by the board of directors or committee of management of the society, to be examined and allowed or disallowed by them, and shall, on the like demand or notice, pay over all the moneys, remaining in his hands and deliver all securities and effects, books, papers, and property of the society in his hands or custody, to such person as the society appoint; and in case of any neglect or refusal to deliver such account, or to pay over such moneys, or to deliver such securities and effects, books, papers, and property in manner aforesaid, the society may sue upon the bond, or may apply to the Court, who may proceed thereupon in a summary way, and make such order

thereon as to the Court in its discretion shall seem just, which order shall be final and conclusive.

14. Minors may be elected members.

14. Any person under the age of eighteen years may be admitted as a member of any society under this Act, the rules of which do not prohibit such admission, and may give all necessary acquittances; but during his nonage he shall not be competent to vote or hold any office in the society.

15. Shares may be held by two or more persons.

15. Two or more persons may jointly hold a share or shares in any building society; and all shares held jointly by any two or more persons in any society already established the rules whereof shall not prohibit such joint holding, shall be deemed to be lawfully so held.

16. Power to make advances on freehold securities.

16. A society established under this Act may make advances to members out of its funds upon security of freehold property by way of mortgage and shall have power to foreclose such mortgage:

Provided that any land to which such society may become absolutely entitled by foreclosure or by surrender or other extinguishment of the right of redemption shall as soon after as may be conveniently practicable be sold or converted into money.

17. Building society may make advances to members on security only of their uncharged shares.

17. It shall be lawful for any building society duly incorporated or to be incorporated to make advances to members out of its funds on the security only of their uncharged shares, and the money paid thereon in accordance with the rules of the said society which shall provide that such loans shall not exceed fourfifths of the amount actually paid in by such members on account of such shares, and that when the amount so lent as aforesaid and interest and other moneys due thereon shall equal the amount standing to the credit of the share or shares of such member or members in the books of the said society his, her, or their share or shares shall be cancelled to meet the indebtedness aforesaid to the society, and such borrower or borrowers shall cease to be a member or members of the society in respect of such share or shares.

18. Limitation of liability of members.

18. The liability of any member of any society incorporated under this Act in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of

the society.

19. Mortgages not exceeding \$16,000 exempt from stamp duty.

19. All mortgages granted to a building society for any sum not exceeding sixteen thousand dollars shall be exempt from any stamp duty.

20. Recording of mortgages.

20. It shall not be necessary to record any mortgage given to any society, or to the trustees of a society, unless and until it shall be deemed necessary or advisable to enforce the same; but, in lieu thereof, it shall be sufficient notice to all the world of the existence of such a charge, if a memorandum in the form and to the effect in the Third Schedule, signed by the parties giving such mortgages, shall be recorded in the Record Office within three months after such mortgage is effected; and that every such mortgage whereof such memorandum shall be recorded as aforesaid shall have the same and no other effect than if the deed had been fully recorded and that free access shall be had by every person interested in the original mortgage in the possession of such society:

Provided that for the recording of every such memorandum the Deputy Keeper of the Records shall be entitled to demand and have the sum of twenty cents, and that no other fee whatever shall be demanded or taken for recording the same:

And provided also, that on recording any such mortgage deed as aforesaid the usual fees shall be demanded and paid.

21. How stamp duty on mortgages to be impressed and noted.

21. The stamp duty in respect of loans on mortgages to a society shall be impressed, within ninety days of the execution thereof, upon the memorandum to be recorded as mentioned in section 20; and the Stamp Commissioner shall, if thereto required, endorse on the face of the said mortgage that the memorandum has been duly stamped, stating the amount of the duty with which it has been stamped, and the date of such stamping, and it shall not be necessary to impress a mortgage so endorsed with any duty for any purpose.

Every memorandum and mortgage to a society shall state truly the amount of the loan made and by it intended to be secured.

22. Loans exceeding \$6,000 in the aggregate to the same members, how to be stamped.

22. Where the same member has, or other members have, obtained from a society more than one loan in respect of the same property, or the same member has obtained more than one loan in respect of several properties separately, the loans shall be aggregated, and the stamp duty to

which the aggregate amount if exceeding sixteen thousand dollars would be liable shall be impressed upon the last or one of the said memoranda:

Provided that no loan in respect of which duty has been already paid shall be included in such aggregate.

And where, under the rules of such a society, a mortgage may be a continuing security for further sums to be granted by the society, the secretary and the directors shall, within ninety days after the date thereof, cause the original mortgage or memorandum to be stamped with the duty to which such mortgage would be liable in the aggregate if exceeding sixteen thousand dollars.

23. Memorandum as to aggregate of loans.

23. The secretary of a society, or a director thereof, shall, on every memorandum and mortgage for a sum not exceeding sixteen thousand dollars granted to the society to which he is secretary or director, subscribe a note thereon to the effect following: "The aggregate amount of loans by the said society to the borrower (or borrowers) in this security named, or to any person on the premises hereby mortgaged, in respect of which stamp duty has not been paid, does not exceed sixteen thousand dollars."

24. Penalty on subscribing a false note.

24. Any person who shall falsely subscribe such a note as in the last section mentioned shall, on summary conviction, be liable to a penalty of twice the amount of duty payable in respect of the matters concerning which such false note shall have been made.

25. Stamp chargeable to borrower.

25. Notwithstanding any rule of any society to the contrary it shall be lawful for the said society to charge to its members, as part of the costs of the loan, the amount of stamp duty payable in respect of such loan, without altering such rule.

26. Receipt endorsed on mortgage.

26. When all moneys intended to be secured by any mortgage or further charge given to a building society have been fully paid or discharged, the society may endorse upon or annex to such mortgage or further charge a reconveyance of the mortgaged property to the then owner of the equity of redemption, or to such persons and to such uses as he may direct, or a receipt under the seal of the society, countersigned by the secretary or manager, in the form specified in the Fourth Schedule, and shall, at the expense of the mortgagor, cause satisfaction to be entered upon the margin of the record of the memorandum of mortgage recorded in the Record Office by the secretary or manager, or an attorney or agent appointed under the seal of the society for such purpose generally or for any specific case, and such receipt and such entry of satisfaction shall vacate the mortgage or further charge or debt, and vest the estate of and in the property therein

comprised in the person for the time being entitled to the equity of redemption, without any reconveyance or resurrender whatsoever:

Provided that if the mortgage or further charge has been taken under the Registration of Titles Act satisfaction shall be entered as by that Act required at the expense of the mortgagor.

27. Power to borrow money.

27. With respect to the borrowing of money by societies incorporated under this Act, the following provisions shall have effect -

(a) any such society may receive deposits or loans at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies, or joint stock companies, to be applied to the purposes of the society;

(b) the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed threefourths of the amount for the time being secured to the society by mortgages from its members;

(c) any deposits with or loans to a society incorporated under this Act made before the 4th June, 1897, in accordance with its certified rules are hereby declared to be valid and binding on the society, but no further deposits or loans shall be received by such society except within the limits provided by this section.

28. Method of calculating amount secured to a society for the purpose of ascertaining limits for receiving deposits or loans.

28. In calculating the amount for the time being secured to a society under this Act by mortgages from its members for the purpose of ascertaining the limits of its power to receive deposits or loans at interest, the amount secured on properties, the payments in respect of which were upwards of twelve months in arrear at the date of the society's last preceding annual account and statement, and the amount secured on properties of which the society had been twelve months in possession at the date of such account and statement, shall be disregarded:

Provided that this section shall not affect the validity of any deposit or loan which was within the limit provided by law at the time when it was received.

29. Payment of sums not exceeding \$40,000 when members or depositors die intestate.

29. If any member or depositor with a building society having in the funds thereof a sum of money not exceeding forty thousand dollars shall die intestate, then the amount due may be paid

to the person who shall appear to the directors or committee of management of the society to be entitled under the Intestates Estates and Property Charges Act to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration made before a Justice or a Notary Public that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid:

Provided that whenever the society after the decease of any member or depositor has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as next of kin or as the lawful representative of such deceased member or depositor against the funds of the society but nevertheless such next of kin or representative shall have his lawful remedy for the amount of such payment as aforesaid against the person who has received the same.

30. Provision for the case of a member dying intestate leaving an infant heir.

30. Whenever a member of a building society, having executed a mortgage to the society, shall die intestate, leaving an infant heir or infant coheir, it shall be lawful for the said society, after selling the premises so mortgaged to them, to pay to the administrator or administratrix of the deceased member any money, to the amount of three hundred dollars, which shall remain with the society, after paying the society the amount due to the society and the costs and expenses of the sale, without being required to pay or invest the same in any other manner that may at any time by law be provided generally in respect of trustees.

The said sum of three hundred dollars shall be considered as personal estate, and be liable to duty accordingly.

31. Societies shall make annual audits and statements of the funds to the members.

31. The secretary or manager of a building society shall once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balances due or outstanding on their mortgage securities (not including prospective interest) and the amount invested otherwise than in loans to members under sections 16 and 17; and every such account and statement shall be attested by the auditors to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary or manager; and every member, depositor, and creditor for loans shall be entitled to receive from the society a copy of such account and statement, and a copy thereof shall be sent to the Deputy Keeper of the Records within fourteen days after the annual or other general meeting at which it is presented, who shall see that such

statement conforms to the requirements of this section, and another copy thereof shall be suspended in a conspicuous place in every office of the society. The copy of such account and statement forwarded to the Deputy Keeper of the Records shall be published by that officer in the *Gazette*.

32. Form and contents of annual statements under section 31. Duties of auditors. "Official year" defined.

32. (1) Every annual account and statement under section 31 shall be made up to the end of the official year of the society to which it relates, and shall be in such form and shall contain such particulars as the Deputy Keeper of the Records may from time to time, with the approval of the Minister, direct, either generally, or with respect to any society or class of societies:

Provided that every such account and statement shall contain the particulars mentioned in section 31, and shall set forth -

(a) with respect to mortgages to the society upon each of which the present debt does not exceed forty thousand dollars (not being mortgages where the repayments are upwards of twelve months in arrear, or where the property has for upwards of twelve months been in possession of the society), the number of all such mortgages and the aggregate amount owing thereon at the date of the account or statement, such information being given separately in respect of each of the four following classes -

(i) where the debt does not exceed ten thousand dollars;

(ii) where the debt exceeds ten thousand dollars and does not exceed twenty thousand dollars;

(iii) where the debt exceeds twenty thousand dollars and does not exceed thirty thousand dollars;

(iv) where the debt exceeds thirty thousand dollars and does not exceed forty thousand dollars;
and

(b) with respect to any other mortgage to the society, the particulars shown by the appropriate tabular form in the Fifth Schedule.

(2) Every auditor, in attesting any such annual account or statement, shall either certify that it is correct, duly vouched and in accordance with law, or specially report to the society in what respect he finds it incorrect, unvouched, or not in accordance with law, and shall also certify that he has at that audit actually inspected the mortgage deeds and other securities belonging to the society, and shall state the number of properties with respect to which deeds have been produced

to and actually inspected by him.

(3) For the purposes of this section the expression "official year" shall mean, such period of twelve calendar months, as may from time to time be determined upon by any such society, terminating on the date up to which its annual account and statement are made up.

33. Determination of disputes by arbitration.

33. Where the rules of a building society direct disputes to be referred to arbitration, arbitrators shall be named and elected in the manner such rules provide, or, if there be no such provision, at the first general meeting of the society, none of the said arbitrators being beneficially interested directly or indirectly in its funds, of whom a certain number, not less than three, shall be chosen by ballot in each such case of dispute, the number of the said arbitrators and mode of ballot being determined by the rules of the society; the names of such arbitrators shall be duly entered in the minute book of the society, and, in case of the death or refusal or neglect of any of the said arbitrators to act, the society, at a general meeting, shall name and elect an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act; and whatever award shall be made by the arbitrators or the major part of them, according to the true purport and meaning of the rules of the society, shall determine the disputes; and should either of the parties to the dispute refuse or neglect to comply with or conform to such award within a time to be limited therein, the Court, upon good and sufficient proof being adduced of such award having been made, and of the refusal of the party to comply therewith, shall enforce compliance with the same upon the petition of any person concerned.

34. "Disputes" in section 33 defined.

34. The word "disputes" in section 33 or in the rules of any building society shall be deemed to refer only to disputes between the society and a member, or any representative of a member in his capacity of a member of the society unless by the rules for the time being it shall be otherwise expressly provided; and in the absence of such express provision, shall not apply to any dispute between any such society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document other than the rules of the society, and shall not prevent any society, or any member thereof, or any person claiming through or under him from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled.

35. Determination of disputes by Court.

35. The Court may hear and determine a dispute in the following cases -

(a) if it shall appear to the Court, upon the petition of any person concerned, that application has

been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society, and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award;

(b) where the rules of the society direct disputes to be referred to the Court or to Justices.

36. Determination to be final.

36. Every determination by arbitrators or by the Court of a dispute shall be binding and conclusive on all parties, and shall be final to all intents and purposes, and shall not be subject to appeal, and shall not be removed or removable into any court of law, or restrained or restrainable by the injunction of any court of equity:

Provided always that the arbitrators or the Court, as the case may be, may state, at the request of either party, but shall not be compelled to state a case for the opinion of the Court of Appeal on any question of law, and shall have power to grant to either party to the dispute such discovery, as to documents and otherwise, as might now be granted by any court of law or equity, such discovery to be made on behalf of the society by such officer of the society as the arbitrators, or Court may determine.

37. Proceedings necessary for the termination or dissolution of a society.

37. A building society may terminate or be dissolved -

(a) upon the happening of any event declared by its rules to be the termination of the society;

(b) by dissolution in manner prescribed by its rules;

(c) by dissolution with the consent of threefourths of the members holding not less than two-thirds of the number of shares in the society, testified by their signatures to the instrument of dissolution.

The instrument of dissolution shall set forth -

(i) the liabilities and assets of the society in detail;

(ii) the number of members, and the amount standing to their credit in the books of the society;

(iii) the claims of depositors and other creditors, and the provision to be made for their payment;

(iv) the intended appropriation or division of the funds and property of the society;

(v) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

Alterations in the instrument of dissolution may be made with the like consent, testified in the same manner. The instrument of dissolution and all alterations therein shall be recorded in the Record Office and shall be binding upon all the members of the society;

(d) by an order to wind up the society, or a resolution for the winding up thereof, made as is directed in regard to Companies Act with respect to the winding up of companies, the provisions whereof shall apply to any such order or resolution.

Every such order for winding up shall be recorded in the Record Office.

38. Continued application of this Act to societies being dissolved.

38. Where a society under this Act is being dissolved in manner prescribed by its rules, or in pursuance of this Act, the provisions of this Act shall continue to apply in the case of the society, as if the liquidators or other persons conducting the dissolution of the society, or the trustees appointed under the instrument of dissolution, were the board of directors, or committee of management of the society.

39. Liability of members who have received advances when society is being wound up.

39. When a society under this Act is being dissolved or wound up, a member to whom an advance has been made under any mortgage or other security, or under the rules of the society, shall not be liable to pay the amount payable under the mortgage, or other security, or rules, except at the time or times and subject to the conditions therein expressed.

39A. Schemes of arrangement

39A. (1) Where -

(a) a compromise or arrangement is proposed between a society and its creditors or any class of them or between the society and its members or any class of them; or

(b) the Minister, acting pursuant to a power conferred on him by regulations made under the Bank of Jamaica Act, proposes a compromise or arrangement between the society and its creditors,

the Court may, on the application in a summary manner of the society, any creditor or member thereof or the Minister, order a meeting of the creditors or class of creditors, or of the members of the society or class of members, as the case may be, to be summoned in such manner as the Court directs.

(2) The provisions of section 192 (2) to (5), and sections 193 to 195B of the Companies Act shall, *mutatis mutandis*, apply to a compromise or arrangement referred to in subsection (1) of this section as if the society were a company limited by shares

(3) Without prejudice to the generality of subsection (2) -

(a) the provisions of subsection (4) shall apply in any case where a compromise or arrangement is proposed in relation to a society which is a member of a group of connected bodies corporate in respect of any or all of which a compromise or arrangement is also being proposed; and

(b) for the purposes of this section, a group of connected bodies corporate shall be deemed to exist where the same persons or individuals have the effective control, direction or management of the members of the group or have had such effective control, direction or management at any time within the period of twenty-four months immediately preceding -

(i) the date on which the compromise or arrangement is proposed; or

(ii) the date of appointment pursuant to any enactment, of a temporary manager or liquidator, as the case may be, in relation to any member of the group.

(4) a compromise or arrangement in relation to the society may provide that -

(a) the assets and liabilities of the society and the connected company be combined as if the society and any or all of the connected bodies corporate were a single undertaking; and

(b) the members and creditors of the society and any or all of the connected bodies corporate be treated as if they were members and creditors of that single undertaking.

39B. Conversion of society into a company

39B. (1) A registered society may by special resolution and subject to the approval of the Minister determine to convert itself into a company under the Companies Act or to amalgamate with or transfer its engagements to any such company.

(2) If a special resolution for converting a registered society into a company contains the particulars by the Companies Act, required to be contained in the memorandum of association of a company, and a copy thereof has been registered at the office of the registrar of Companies, a copy of such resolution under the signature of the Registrar of Companies shall have the same effect as a memorandum of association duly signed and attested under the said Act.

(3) If a registered society is registered as, or amalgamates with, or transfers all its engagements to a company, the certificate of incorporation of such society under this Act shall thereupon become void and shall be cancelled by the Deputy Keeper of the Records:

Provided that -

(a) the registration of a society as a company shall not affect any right or claim for the time being subsisting against such society, or any penalty for the time being incurred by such society; and

(b) for the purpose of enforcing any such right, claim or penalty, the society may be sued and proceeded against in the same manner as if it had become registered as a company; and

(c) every such right or claim, the liability to such penalty, shall have priority as against the property of such company over all other rights or claims against or liabilities of such company.

40. Register of societies in the Record Office.

40. The Deputy Keeper of the Records shall keep, in the Record Office, a register of all societies incorporated under this Act.

Such register shall always be open to public inspection on payment of such fee as may be fixed from time to time by any rule made under the Record Office Act.

41. Particulars to be entered on such register.

41. It shall be the duty of the Deputy Keeper of the Records to enter on such register the name and place of business of every society incorporated under this Act, and in case any such society shall be dissolved the Deputy Keeper of the Records shall strike the name of such society off the register aforesaid.

42. Proof of registry and of rules of societies.

42. (1) The production of a copy of the rules of any society certified as herein provided, or a

certificate in the form set out in the First Schedule under the hand of the Deputy Keeper of the Records that any such society is registered under this Act, shall be conclusive evidence that such society was at the date of the certificate duly established under this Act, and shall be presumptive evidence of such due establishment at the time of the production of the same.

The rules and alterations or amendments thereof, of any building society may be proved in any Court of this Island by production of a copy of the transcript of the same, certified as aforesaid and filed in the Record Office; provided that such copy purport to be certified to be a true copy of the said rules as they stand at the time, under the hand of the Deputy Keeper of the Records, and to be sealed with the seal of the office.

(2) Any certificate of incorporation or other document relating to a building society purporting to be signed by the Deputy Keeper of the Records shall, in the absence of any evidence to the contrary, be received by the Court and by all Courts of Law and Equity and elsewhere, without proof of the signature; and a printed copy of the rules, of a society certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be received as evidence of the rules.

43. Deputy Keeper of Records' fees for certificates.

43. There shall be paid to the Deputy Keeper of the Records for every certificate required under this Act a fee of twenty-five cents.

44. Appointment of accountant or actuary by Chief Justice.

44. (1) The Chief Justice may, if he thinks fit, on the application of ten members of a society under this Act, each of whom has been a member of the society for not less than twelve months immediately preceding the date of the application, appoint an accountant or actuary to inspect the books of the society, and to report thereon.

(2) Provided as follows -

(a) the applicants shall deposit with the Registrar of the Supreme Court, such sum as a security for the costs of the proposed inspection, as the Chief Justice may require; and

(b) all expenses of and incidental to any such inspection shall be defrayed by the applicants, unless the Chief Justice shall, for good cause shown, order the same to be paid out of the funds of the society, or by the members or officers, or former members or officers of the society, or any one or more of them.

(3) A person appointed under this section shall have power to make copies of any books of the society, and to take extracts therefrom at all reasonable hours, at the registered office of the society, or at any place where the books are kept.

(4) The Registrar of the Supreme Court shall communicate the results of any such inspection to the applicants and to the society.

45. Penalty for obstructing actuary or accountant.

45. Any person obstructing any actuary or accountant appointed under section 44, in the execution of his duty, shall be liable upon summary conviction to a penalty not exceeding forty dollars.

46. Power to order enquiry into affairs of society.

46. It shall be lawful for any Judge of the Supreme Court, on the application of any seven or more shareholders or members of any society under this Act carrying on business in this Island, who may satisfy the said Judge by affidavit and *viva voce* examination that such applicants have a *bona fide* interest in the said society, and that the applicants -

(a) have good reason for believing that the funds of the said society have not been applied; or

(b) are not being applied in accordance with this Act; or

(c) that the rules or by-laws relating to the funds of the said society have been and continue to be knowingly infringed by the directors or other officers of the said society, to the possible detriment of the shareholders or members of the society; or

(d) that the statement of the affairs of the society last issued is not a just and true statement of the affairs of the said society, to issue an order calling upon such society to show cause why one or more competent Inspectors should not be appointed to examine into the affairs of any such society, and to report thereon in such manner as the said Judge may direct, and on failure to show cause at the time appointed an Inspector or Inspectors shall be appointed:

Provided always, that the Judge may require the applicants first to satisfy him, in such manner as may seem best to him, that their conduct is actuated by no personal or malicious motive, but that their application is for the interest of the shareholders or members of the said society; and he may further require the applicants to give security for payment of costs of the inquiry before

appointing any Inspector or Inspectors:

Provided that in the case of any society consisting of less than twenty-one members, no such application shall be made except by not less than one-third of the number of shareholders or members, or by any number of shareholders or members possessing one-fifth of the shares or funds.

47. Costs on refusal of appointment. Proceedings on report.

47. In the event of the Court refusing such appointment, costs shall be granted to the directors as between solicitor and client, and in the event of the Court finding from the report of the Inspectors that the society is insolvent, or that by its management the property and funds of its shareholders are in danger the Judge of the said Court may call on the said society to show cause why a winding-up order should not be made against it.

48. Powers of Inspectors.

48. It shall be the duty of all officers and agents of the society to produce for the examination of the Inspectors, all books and documents in their custody or power; any Inspector may examine upon oath the officers and agents of the society in relation to its business, and may administer such oath accordingly; if any officer or agent refuses or neglects to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the society, he shall be liable on summary conviction to a penalty not exceeding forty dollars in respect of each such offence.

49. Report of Inspectors, filing, and payment of costs thereof.

49. Upon the conclusion of the examination, the Inspectors shall report their opinions to the Court.

Such report shall be filed by the Registrar of the Court, and be opened to public inspection.

All expenses of and incidental to any such examination and report shall be defrayed by the members upon whose application the Inspectors were appointed, unless the Court shall direct the same to be paid out of the assets of the society, which it is hereby authorized to do.

50. Inspection by resolution of the society.

50. Any society as aforesaid may, by special resolution, appoint Inspectors for the purpose of examining into the affairs of such society; the Inspectors so appointed shall have the same powers and perform the same duties as Inspectors appointed by the Court, with this exception,

that instead of making their report to the Court, they shall make the same in such manner and to such persons as the society in general meeting directs; and the officers and agents of the society shall incur the same penalties in case of any refusal or neglect to produce any book or document hereby required to be produced to such Inspectors, or to answer any question, as they would have incurred if such Inspectors had been appointed by the Court.

51. Inspectors' report admissible as evidence.

51. The report of any Inspectors appointed under this Act, or any copy thereof certified and signed by the Inspectors, shall be admissible, in any legal proceeding, as evidence of the opinion of the Inspectors in relation to any matter contained in such report.

52. Power of Judge to make order under section 46.

52. It shall be lawful for a Judge of the Supreme Court to make an order under section 46 on the application of any member of any building or benefit building society carrying on business in this Island, who has been a member for not less than twelve months, and who may satisfy the said Judge by affidavit that he has a *bona fide* interest in the society, and that the society has, for two months after notice, failed to prepare any account or statement required by this Act.

53. Punishment of fraud in withholding money, etc. Proceedings.

53. If any person whosoever by false representation or imposition, obtains possession of any moneys, securities, books, papers, or other effects of a building society, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by law, he shall be liable on summary conviction to a penalty not exceeding forty dollars, with costs not exceeding two dollars, and to be ordered to deliver up to the society all such moneys, securities, books, papers, or other effects of the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to be imprisoned with or without hard labour, for a term not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under the provisions of this Act:

Provided that nothing in this section shall take away the right of appeal from any party.

Proceedings under this section may be taken by or at the instance of

(a) the society; or

(b) any member authorized by the society, or by the board of directors, or by the Deputy Keeper of the Records, or by the Director of Public Prosecutions; or

(c) the Deputy Keeper of the Records; or

(d) the Director of Public Prosecutions.

54. Penalties.

54. If any building society hereafter formed or any persons representing themselves to be a building society commence business without first obtaining a certificate of incorporation under this Act, the person or persons by whom business shall have been so commenced, shall be liable for every day business is so carried on, upon summary conviction upon the complaint of the Deputy Keeper of the Records, to a penalty not exceeding ten dollars. If any building society receives loans or deposits in excess of the limits prescribed by this Act, the directors or committee of management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess.

55. Penalty on officer receiving commissions, etc., on a loan.

55. No director, secretary, surveyor, solicitor or other officer of a building society, shall in addition to the remuneration prescribed or authorized by the rules of the society receive from any other person any gift, bonus, commission or benefit for or in connection with any loan made by the society, and any person paying or accepting any such gift, bonus, commission or benefit shall be liable on summary conviction to a fine not exceeding one hundred dollars, and in default of payment to be imprisoned for a term not exceeding six months, and the person accepting any such gift, bonus, commission or benefit shall, as and when directed by the Court by whom he is convicted, pay over to the society the amount or value of such gift, bonus, commission or benefit, and in default of such payment shall be liable to be imprisoned for a term not exceeding six months.

56. Falsifying document required to be sent to Deputy Keeper of Records.

56. If any person wilfully makes, orders, or allows to be made, any false statement in any document required by this Act to be sent to the Deputy Keeper of the Records, or by erasure, omission, or otherwise, wilfully falsifies any such document, he shall be liable on summary

conviction to a fine not exceeding one hundred dollars.

57. Neglect or refusal to perform duties.

57. If any society under this Act neglects or refuses -

(a) to give any notice, send any return, or document, or do, or allow to be done, anything which the society is by this Act required to give, send, do, or allow to be done; or

(b) to do any act, or furnish any information required for the purposes of this Act by the Deputy Keeper of the Records, or by an inspector,

the society, and also every officer thereof bound by the rules thereof to fulfil the duty whereof a breach has been so committed, and if there is no such officer, then every member of the committee of management, or board of directors of the society, unless it appears that he was ignorant of, or attempted to prevent the breach, shall for each offence be liable on summary conviction to a fine not exceeding forty dollars, and in the case of a continuing offence, to an additional fine not exceeding ten dollars for every week during which the offence continues.

58. Forms in Schedules.

58. The forms in the Schedules may be used under this Act.

59. Capital to be raised by shares. Fresh shareholders may be admitted.

59. (1) It shall be lawful for every building society to raise its capital by shares, not exceeding, in the case of an unincorporated society, an estimated ultimate value of one hundred dollars each, and to provide for the payment of the amounts payable in respect of such shares by the shareholders by payments in full, or from time to time on account or by monthly or other periodical payments, and that every person making a payment on account of any share shall be deemed and entered as a shareholder, and be subject to, and bound by the rules of such society for the time being.

(2) Subject to the rules for the time being of each such society, it shall be lawful for fresh shareholders to be admitted and enrolled from time to time.

60. Limitation of responsibility of officers.

60. No officer of any society shall be liable to make good any deficiency which may arise in the funds of such society:

Provided always, that every officer of any such society shall be, and is hereby declared to be personally responsible and liable for all moneys actually received by him on account of, or to and for the use of the said society.

61. Appointment and removal of officers.

61. The rules of a society may provide for the appointment, removal, and dismissal, from time to time, of such presidents, directors, committees, secretaries, treasurers, builders, surveyors, solicitors, auditors, clerks, and other officers, as may be deemed necessary or advisable for the working of such society, in such manner, on such terms, with such powers, and by such majorities, as shall in and by such rules be provided; and all or any such officers may be appointed, removed or dismissed accordingly:

Provided, that all or any of such offices may be filled by members of such society notwithstanding their position as such members.

62. Society not formed until rules have been certified and filed. Rules must be entered in book.

62. (1) No society shall be deemed a society within the meaning of this Act, until its rules shall have been certified and filed; and all rules and amendments and alterations thereof, and additions thereto, shall be and be deemed to be the rules of such society from the respective dates of their certification and filing as aforesaid, until the rescission, annulling, alteration or amendment thereof respectively shall be certified and filed, and except in so far as they may be so rescinded, altered or amended; and the rules for the time being of such society, so certified and filed as aforesaid, shall be binding on the several members and officers thereof, and contributors and subscribers thereto, and on their representatives, all of whom shall be deemed and taken to have full notice thereof.

(2) No rule of any society, after having been certified and filed as aforesaid, shall be altered, rescinded or repealed, nor shall any new rules be adopted except either as directed by the rules of such society or unless upon the requisition, in writing, of ten or more of the members of such society, holding in all not less than fifty shares, specifying the rules sought to be altered,

rescinded, or repealed, or adopted, and all alterations proposed to be made therein, which requisition shall be publicly exhibited at the rooms or office of such society, at least one month before any meeting to consider the same shall be called; nor unless a general meeting shall be thereupon duly convened to consider the same; nor unless upon a vote of at least threefourths in number of the shareholders of such society present at such general meeting, and also upon the vote of shareholders holding at least threefourths of the number of shares held by the shareholders so present at such general meeting.

(3) All the rules for the management of an unincorporated society, and all alterations, amendments, annullings, and rescissions of such rules, shall be entered in a book, to be kept by an officer of such society appointed for that purpose, to which book all the members of such society shall be entitled to have access at all times when the office of such society shall be open for business.

63. How business to be carried on.

63. The general business of each society shall be conducted and carried on for the purposes, in the manner and by the persons mentioned and set forth in or appointed under or by virtue of the rules thereof for the time being; and the funds of such society, while not required or used for the purposes thereof, shall be lodged in some of the Banks of this Island, in such manner, and in the names of such persons, as shall by the rules of such society be directed, required, or permitted; and all interest, if any, arising therefrom shall be applied to increase the general funds of such society.

64. General Meeting.

64. All general meetings of any society shall be held at such places and times, and in such manner, and shall be publicly notified in such manner, and for such length of time, as shall be required by the rules and regulations of such society; and in the event of there being no rule on the subject, then the time and place for holding each such general meeting shall be notified by public advertisement, signed by at least two directors of such society, in at least two public newspapers of the Island, at least two weeks prior to the holding of such general meeting.

65. Appointment of committees.

65. All committees to be appointed under or by virtue of the rules of any society, or by any general meeting thereof, shall be appointed solely at general meetings of the members of such society convened as aforesaid by or under resolution of such general meeting, which resolution

shall specify the purposes for which such committee shall be appointed, and the powers delegated to them, and that such committee shall, in all things delegated, committed or entrusted to them, respectively act for and on behalf of such society; and all acts and orders of such committees under the powers delegated to them respectively during the time for which they shall be appointed or hold office shall be binding on the whole of the members of such society:

Provided that the transactions of each such committee shall be entered in a book belonging to the society, and liable to inspection by all or any of the members of such society at all reasonable times, and shall be subject and liable to the review, allowance, disallowance and control of such society or of the directors thereof for the time being, in such manner and form as by the rules of such society shall be provided.

66. Donations and bequests.

66. It shall be lawful for any society to receive donations and bequests from any person or persons for the purposes of such society, or any of them; and all such sums shall be applicable to the general purposes of such society, or to the special purpose for which the same may be given, as the case may be, in the like manner as the contributions of the several members of such society are or shall be directed to be applied in pursuance of this Act, and shall not be applied in any other manner.

67. Bonuses on shares.

67. It shall be lawful for any society to have and receive from any member or members thereof any sum or sums of money by way of bonus on any share or shares, for the privilege of receiving the same in advance, prior to the same being realized, and also any interest for the share or shares so received, or any part thereof.

68. Members may sue and be sued by society.

68. Members of any society accepting any office or employment under or by virtue of the rules thereof, or being or becoming in any way indebted or liable to such society, or having any claims against such society, may sue and be sued by such society, and shall be answerable, civilly and criminally, in respect of their actions, transactions, and omissions in and about the business and property of such society, in like manner, and as fully, to all intents and purposes, as if they were not members of such society, or partners therein; and the fact of such membership shall not be set up, or in any way avail to delay or defeat any such civil or criminal proceeding or process in any part whatsoever.

69. Definitions.

69. For the purposes of sections 70, 71, 72, 73 and 74 -

"Minister" means the Minister responsible for housing;

"Scheme" means a Housing Scheme, a Slum Clearance Scheme, an Improvement Scheme, an Emergency Housing Scheme and a Scheme varying or revoking an existing Scheme, approved by the Minister in accordance with the provisions of the Housing Act;

"Society" means any Building Society operating in the Island under the provisions of this Act.

70. Limitation of responsibility of officers.

70. (1) Where application has been made by the owner of any land or building for permission to carry out reconstruction work in accordance with the provisions of subsections (1) and (2) of section 22 of the Housing Act, and the application has been granted by the Minister, or where an application has been approved by the Minister for the purchase of premises comprised in any Scheme, the Directors or the Board of Management of a Society may make a loan, for the purposes of such reconstruction work or purchase, as the case may be, upon such terms or conditions as they may from time to time determine.

(2) Every application to a Society for a loan under subsection (1) shall first be submitted for the consideration of the Minister who shall either approve or disallow the application.

(3) Where such an application is approved, the application shall be certified by the Minister and shall be forwarded to the Building Society, so as to enable a loan to be made in accordance with the provisions of subsection (1).

71. Power of Society to make loans without amending, repealing or altering its Rules.

71. Where the Rules of a Society do not permit of the making of a loan in accordance with the provisions of section 70, it shall be lawful for such Society to make the loan on such terms as may be agreed between the Society and the Minister at any time, or from time to time, without amending, repealing or altering its Rules, notwithstanding any provisions to the contrary contained in this Act.

72. Extent of guarantee by the Minister.

72. The Minister may guarantee any loan or loans made by a Society under the provisions of this Act up to a maximum of 25 *per centum* on any loan or loans made by a Society in respect of any one Scheme.

73. Payment of guarantee.

73. In any case where the Minister at any time becomes liable to make any payment to a society in respect of any guarantee given in accordance with the provisions of section 72, such payment shall be a charge on the Consolidated Fund and assets of the Island.

74. Form of Mortgage. Exemption in respect of all Fees and Stamp Duties.

74. (1) Every loan made under the provisions of section 70 shall be secured by an Instrument of Mortgage in the form set out in the Seventh Schedule, and shall be registerable and enforceable as a Mortgage pursuant to the Registration of Titles Act.

(2) Notwithstanding anything contained in any other enactment, any Mortgage or other Instrument necessary for the purpose of securing any loan under this Act, or for preserving or enforcing any security taken therefor, including the sale and transfer of any property mortgaged or charged, upon which, or in respect of which stamp duties, registration fees or recording fees are payable, shall be exempt from the payment of such stamp duties, registration or recording fees.

Action by Minister where Societies cease to be viable

75. Interpretation.

75. For the purposes of this Act -

"capital base" in relation to a building society means a total of -

(a) the amount paid up on its capital shares;

(b) its deferred shares (if any);

(c) the reserve fund;

(d) the retained earnings reserve,

less any amount by which that total has become impaired;

"capital share" means a permanent non-withdrawable share issued on terms that it may be interest-bearing, but does not include a redeemable preference share;

"deferred share" means a share issued by a mutual society on terms that it shall not be withdrawable for not less than three years, and that it may be interest-bearing;

"mutual society" means a building society in relation to which -

(a) all assets of the society are held by members in common;

(b) each member is entitled to one vote without regard being had to the number of shares (if any) held by such member;

(c) any surplus assets remaining after a dissolution of the society are distributed among members *pari passu*;

"proprietary society" means a building society in relation to which -

(a) voting rights are confined to a particular class of shares; and such rights are determined by the number of shares held;

(b) any surplus assets remaining after a dissolution are distributed to holders of a particular class of shares or subordinated debt in the rank and proportion appropriate to their share holding;

"Supervisor" and "Deputy Supervisor" shall be construed in accordance with the Bank of Jamaica Act.

76. Society ceasing to be viable.

76. (1) Where the Minister, after consultation with the Supervisor, is of the opinion that -

(a) a building society has ceased to be viable;

(b) the viability of the society cannot be restored by the exercise of powers conferred by regulations made under section 34F of the Bank of Jamaica Act; and

(c) it is in the best interests of the society's depositors that there be a reconstruction of the society or a disposition of its assets in accordance with section 79 on an expeditious basis,

the Minister shall notify the Society in writing accordingly and provide the society with an opportunity to make representations within ten days of the receipt of the notice by the society.

(2) For the purposes of subsection (1) the Minister may take into account all matters the Minister considers relevant and in all cases, whether -

(a) to sustain its operations, the society is dependent on loans, advances, guarantees or other financial assistance from Government agencies or undertakings;

(b) the society's capital base is less than the amount required by regulations made under the Bank of Jamaica Act;

(c) the society has failed to pay any liability that has become due and payable or will not be able to pay its liabilities as they become due and payable.

(3) The powers conferred by this section and by sections 77 to 81 may be exercised by the Minister in relation to a building society in respect of which the Minister has assumed temporary management in the exercise of powers conferred on him by regulations made under the Bank of Jamaica Act.

77. Vesting of society's shares, etc. in Minister.

77. (1) Where, after due consideration of any representations made by the society under section 76 (1), the Minister is of the opinion that the matters specified in paragraphs (a) and (b) of section 76 (1) are applicable to that society, the Minister may by order (hereinafter referred to as a vesting order) subject to the approval of the Cabinet on the recommendation of a committee of advisors comprising the Supervisor, the Deputy Supervisor, the Financial Secretary and such

other person as the Minister may appoint -

(a) in the case of a proprietary society, vest the capital shares, and subordinated debt of the society in the Minister; and

(b) in the case of a mutual society, vest in the Minister -

(i) all voting and decision-making powers attaching to shares of any class issued by the society;

(ii) all the voting and decision-making powers exercisable in relation to any subordinated debt of the society; and

(iii) control of the property, rights, assets and liabilities of the society.

(2) An order made under subsection (1) -

(a) vests the capital shares and subordinated debt of the society in the Minister as from the date of the order, free from any incumbrance attaching thereto, notwithstanding that the Minister knows of the incumbrance;

(b) does not extinguish any adverse claim in relation to such capital shares and subordinated debt to the extent that it is a personal claim against a person other than the Minister or a person claiming under him; and

(c) does not prevent a secured creditor or assignee or successor in title of the person who was the holder of the proprietary shares or subordinated debt immediately before the making of the order, from being entitled to receive compensation under section 82.

78. Effect of vesting order.

78. (1) Where a vesting order is made in respect of a society -

(a) the powers, duties, functions, rights and privileges of the directors of the society and those of its officers responsible for its management are suspended from the date of the order and the Minister may exercise or perform those powers, duties, functions, rights or privileges;

(b) the Minister may appoint one or more persons to assist in the management of the society and may assign to such person or persons any of the powers, duties, functions, rights or privileges of the directors and officers of the society;

(c) the Minister may, if he considers it to be in the best interests of the depositors of the society, apply to a Judge of the Supreme Court for an order staying -

(i) the commencement or continuance of any proceedings by or against the society, for such period as the Judge thinks fit;

(ii) any execution against the property of the society;

(d) no creditor of the society shall enforce any remedy against the society or its property without the leave of a Judge of the Supreme Court;

(e) no person may terminate or amend any agreement with the society or claim an accelerated payment under any agreement by reason only of -

(i) the insolvency of the society;

(ii) a default, before the vesting order was made, by the society in the performance of its obligations under the agreement; or

(iii) the making of the vesting order.

(2) Any stipulation in an agreement referred to in paragraph (e) of subsection (1) shall be of no force or effect if it -

(a) has the effect of providing for, or permitting, anything that is contrary to that paragraph; or

(b) provides that on -

(i) the society's insolvency;

(ii) default by the society in the performance of an obligation; or

(iii) the making of the vesting order,

the society ceases to have the right to use or deal with property that the society would otherwise have.

(3) Subject to subsection (4), paragraph (e) of subsection (1) shall not apply in respect of an agreement with the society which was made no later than six months prior to the date of the vesting order.

(4) Subsection (3) shall not apply in respect of an agreement between the society and a connected person.

(5) Where an order is granted pursuant to paragraph (c) (i) of subsection (1) in respect of any proceedings time shall not continue to run against the person bringing those proceedings during the period determined by the Judge under that paragraph.

(6) For the purposes of this section, the following persons shall be treated as being connected with a given society ("S") and the society with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist -

(a) a holding company or subsidiary of S;

(b) a subsidiary of a holding company of S;

(c) a holding company of a subsidiary of S;

(d) any company of which S has control;

(e) any company of which S and the persons connected with S together have control;

(f) any company which together with S constitute a group;

(g) an individual who is a director, manager or a person who has control of S or any partner or any immediate relative of such director, manager or person aforesaid;

(h) any company of which any of the persons referred to in paragraph (g) is a director, manager or has control.

79. Restructuring Transaction.

79. (1) Where a vesting order has been made by the Minister in respect of a society, the Minister may, in addition to his other rights and powers, carry out, or cause the society to carry out -

(a) a transaction or a series of transactions that involves the sale of all or part of the capital shares or subordinated debt of the society to one or more buyers;

(b) a transaction that involves the amalgamation of the society;

(c) a transaction or a series of transactions that involves the sale or other disposition of all or part of the assets of the society or the assumption of all or part of its liabilities, or

(d) any other transaction or a series of transactions the purpose of which is to restructure a substantial part of the business of the society.

*(2) Where the Minister considers that a transaction or a series of transactions referred to in subsection (1) has been substantially completed, he shall cause a notice to that effect to be published in the *Gazette*, specifying the date of such completion.*

(3) No restriction on the right of a society in respect of which a vesting order has been made, to sell any of its assets or to provide for the assumption of any of its liabilities, other than a restriction provided for in an Act, shall apply so as to prevent the Minister, the society or any other person, from carrying out a transaction referred to in subsection (1).

80. Winding-up or Scheme of Arrangement.

80. (1) The Minister shall apply to the Court for a winding up order or propose a compromise or arrangement under the provisions of this Act in respect of a society if, in the opinion of the

Minister, a transaction or a series of transactions referred to in section 79 (1) is not substantially completed on or before a date that is -

- (a) one hundred and eighty days after the making of the vesting order; or
- (b) the expiration of any extension of that period.

(2) The Minister, in relation to all costs, expenses and liabilities incurred on account of actions taken by him in relation to a society in respect of which a vesting order has been made, shall, in a winding-up of such society, be a creditor of that society and all such costs, expenses and liabilities shall be deemed to be impositions by the Government under section 294 (1) of the Companies Act and accordingly shall be paid in priority to all other debts.

(3) Where it is found necessary to extend the period specified in subsection (1) (a) -

- (a) the Minister shall apply to the Court for such extension;
- (b) the Court may grant the extension for such period as the Court thinks fit having regard to the circumstances.

81. Notice *re* compensation.

81. (1) In respect of a proprietary society, the Minister shall within forty-five days after the date specified in the notice referred to in subsection (2) of section 79, give to each person who, immediately before the making of the vesting order, was the holder of capital shares or subordinated debt in the society to which the vesting order relates, or the assignee or successor in title of that person -

- (a) a notice containing an offer of compensation in an amount to which that person would be entitled, determined in accordance with section 82; or
- (b) a notice stating that no offer of compensation is being made because the amount of compensation so determined is nil.

(2) In respect of a mutual society, in the event that any surplus remains after a transaction or a series of transactions referred to in subsection (1) of section 79 has been substantially completed, after payment of all outstanding liabilities of the society and all other costs incurred in relation to such transactions, the Minister shall within forty-five days after the date specified in the notice referred to in subsection (2) of section 79, distribute to those persons who, immediately before the making of the vesting order would have been entitled to share in the distribution of surplus assets of the society on its dissolution, in the order and proportion to which they would have been entitled in such event.

82. Determination of compensation.

82. (1) The amount of compensation payable to a person affected by the making of a vesting order in respect of a building society shall be calculated on the net value accruing upon completion of any of the transactions referred to in subsection (1) of section 79, after payment of all outstanding liabilities of the society and all other costs incurred in relation to such transactions.

(2) Where the amount of the society's assets does not exceed its liabilities and any financial assistance and costs referred to in subsection (1), the amount of compensation shall be nil.

(3) The Minister shall make regulations prescribing the principles and procedures applicable to the calculation and payment of compensation payable under this section and matters incidental thereto and regulations so made shall be subject to affirmative resolution of the House of Representatives.

83. Application to Court.

83. A building society in respect of which a vesting order has been made or any person claiming an interest or right over any property to which that order relates may make an application to the Court for the purpose of -

(a) establishing such right or interest (if any);

(b) determining the amount of compensation (if any) to which he is entitled;

(c) enforcing his right to any such compensation."

84. Vesting by Minister.

84. (1) Where -

(a) a vesting order has been made under section 77 (1) in respect of a society; and

(b) before any action is taken by the Minister pursuant to section 79 (1), the Minister is satisfied that the matters specified in section 76 (1) and (2) are no longer applicable in respect of that society,

the Minister may act in accordance with subsection (2).

(2) The Minister may, with the approval of the Cabinet on the recommendation of the committee of advisors referred to in section 77 (1), by order -

(a) in the case of a proprietary society, revest the capital shares and subordinated debt of the society in -

(i) the persons who, immediately before the making of the vesting order, were the holders of those capital shares and subordinated debt; or

(ii) the assignees and successors in title of those persons;

(b) in the case of a mutual society, revest -

(i) all voting and decision-making powers attaching to shares of any class issued by the society;

(ii) all the voting and decision-making powers exercisable in relation to any subordinated debt of the society; and

(iii) control of the property, rights, assets and liabilities of the society,

in the persons who, immediately before the making of the vesting order were so entitled.
(3) An order made under this section shall be subject to such terms and conditions as may be specified therein

FIRST SCHEDULE

FORM A (Section 3)

Certificate of Incorporation

The Deputy Keeper of the Records hereby certifies that the _____ Building Society, established at _____ in the parish of _____, is incorporated under the Building Societies Act, this ____ day of _____, 19____.

The incorporation does not imply any approval by the Deputy Keeper of the Records of its rules or tables, or any guarantee of the management or stability of the society.

Deputy Keeper of the Records, Jamaica.

FORM B (Section 10)

Certificate of Registration of Change of Name

The Deputy Keeper of the Records hereby certifies that the registered name of the _____ Building Society established at _____ in the parish of _____ is changed from the date hereof to the name following

This _____ day of _____, 19____.

Deputy Keeper of the Records, Jamaica.

Form C (Section 11)

Certificate of Alteration of Chief Office

The Deputy Keeper of the Records hereby certifies that the registered Chief Office of the _____ Building Society established at _____, in the parish of _____ is changed from the date hereof to the office or place following

This _____ day of _____, 19____.

Deputy Keeper of the Records, Jamaica.

FORM D (Section 42 (1))

Certificate of Registration of Alteration of Rules

The Deputy Keeper of the Records hereby certifies that the foregoing alteration of (or addition to) the rules of the _____ Building Society established at _____ in the parish of _____ is recorded under the Building Societies Act, this _____ day of _____, 19____.

This certificate does not imply any approval by the Deputy Keeper of the Records of the rules, or alterations, or any guarantee of the management or stability of the society.

Deputy Keeper of the Records, Jamaica.

SECOND SCHEDULE (Section 13 (1))

FORM OF BOND

Know all men by these presents, that we A. B., of _____ one of the officers of _____ Building Society established at _____ in the parish of _____ and C.D., of _____ (as surety on behalf of the said A.B.), are jointly and severally held and firmly bound to the said Society in the sum of _____ to be paid to the said Society, for which payment well and truly to be made we jointly and severally bind ourselves, and each of us by himself, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.

Dated the _____ day of _____, in the year of our Lord _____.
Whereas the above bounden A. B. hath been duly appointed to the office of _____, of the _____ Building Society, established as aforesaid, and he, together with the above bounded C.D. as his surety, have entered into the above written bond subject to the condition hereinafter contained:

Now, therefore, the condition of the above written bond is such, that if the said A.B. shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers and property of or belonging to the said Society in his hands or custody, to such person or persons as the said Society shall appoint, according to the rules of the said Society, together with the proper or legal receipts or vouchers for such payments, then the above written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

THIRD SCHEDULE (Section 20)

Form of Memorandum

Date of deed.
Names of parties.
Substance of recitals.
Description of premises.

Full abstract of provisions of deed.

Signatures of parties executing

Signature of witness.

Date of probate, and before whom taken.

Jamaica, SS.

I swear that the above _____ is a true extract of the mortgage deed to the
_____ Building Society.

_____ Secretary.

Sworn to before me, at _____ this _____ day of _____ 19____.

J. P. (Parish)

FOURTH SCHEDULE (Section 26)

Discharge of Mortgage

The _____ Building Society hereby acknowledges to have received all moneys
secured by the (within or annexed) mortgage.

Dated this _____ day of _____, 19____.

(Society's seal.)

Countersigned, _____

X.Y., Secretary or Manager.

FIFTH SCHEDULE (Section 32 (1) (b))

FORM A

Particulars to be set forth in the case of a mortgage, where the repayments are not upwards of twelve months in arrear, and the property has not been upwards of twelve months in possession of the society, and where the present debt exceeds \$40,000.00.

1 Date of advance	2 Whether subject to any prior mortgage or change. If so, what amount	3			
Original valuation of property	4 Amount of advance	5 Present debt	6 Amount of payments in advance		
7 Amount of payments in arrear	8 Observations				
\$	\$	\$	\$	\$	\$

Total

FORM B (Section 32 (1) (b))

Particulars to be set forth in the case of property of which the Society has been upwards of twelve months in possession

1 Date of advance	2 Date when possession was taken	3 Whether subject to any prior mortgage or charge.
If so, what amount	4 Amount of advance	5 Original valuation of property
was taken	6 Debt when possession	7 Present amount included in assets
the year	8 Gross income for the year	9. Outgoings for
10. Observations		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

Total

FORM C (Section 32 (1) (b))

Particulars to be set forth in the case of a mortgage, where the repayments are upwards of twelve months in arrear, and the property has not been upwards of twelve months in possession of the society.

1 Date of advance	2 Whether subject to any prior mortgage or change. If so, what amount	3
Number of months in arrear	4 Original valuation of property	5 Amount of advance
	6 Present debt	
7 Amount of payments in arrear	8 Observations	
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

Total

SIXTH SCHEDULE (Section 37)

Certificate of Recording of Instrument of Dissolution

The Deputy Keeper of the Records hereby certifies that an instrument of dissolution of the _____ Building Society, established at _____, in the parish of _____ is recorded the _____ day of _____, 19____, under the Building Societies Act.

Dated the _____ day of _____, 19____.

Deputy Keeper of the Records, Jamaica.

SEVENTH SCHEDULE (Section 74)

FORM OF MORTGAGE

I, A. B. (insert addition), being registered as the proprietor of an estate (here state nature of the estate) in the land hereinafter described subject to the incumbrances notified hereunder in consideration of the sum of _____ (the receipt whereof is hereby acknowledged), this day lent to me by the _____ Society, hereinafter called the mortgagee do hereby covenant with the said mortgagee-Firstly, to pay to the said mortgagee the said principal sum of _____ dollars, on the _____ day of _____ 19 _____. Secondly, to pay to the said mortgagee so long as the said principal sum or any part thereof shall remain unpaid, interest on the said sum, or on so much thereof as shall for the time being remain unpaid, at the rate of _____ *per centum* per annum by equal payments on the _____ day of _____, 19____, and on the _____ day of _____ in every year. Thirdly, that _____ will insure against _____ (here set forth the items of insurance)

in the name of the mortgagee.

Fourthly Here set forth any special covenant.

Fifthly

Sixthly

And for better securing the payment in manner aforesaid of the said principal sum and interest, I hereby mortgage to the said mortgagee all my estate and interest, and all the estate and interest which I am entitled to transfer or dispose of, in all that _____ (insert if applicable part of _____ or otherwise according to the certificate) of _____ (if the land mortgaged be part only of the land comprised in the existing certificate, set forth in links or feet the boundaries, and refer to a map).

Dated the _____ day of _____, 19 ____.

Signed by the said A. B. in
the presence of

Signed by the said C.D.

in the presence of

INCUMBRANCES REFERRED TO.

JAMAICA

No. 12–2002

I assent,

[L.S.]

H. F. COOKE,
Governor-General.

28th day of March, 2002.

AN ACT to Amend the Building Societies Act.

[28th March, 2002]

BE IT ENACTED BY The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Building Societies (Amendment) Act, 2002, and shall be read and construed as one with the Building Societies Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title
and con-
struction.

2. Section 75 of the principal Act is amended by—

(a) inserting in the heading immediately after the word “Minister” the words “and Supervisor”;

Amendment
of section
75 of prin-
cipal Act.

- (b) insertion next after the definition of “proprietary society” the following—

“regulated or supervised financial institution” means an institution regulated or supervised by the Bank of Jamaica or the Financial Services Commission;”.

Insertion
of new
sections
75A, 75B,
75C, 75D
and 75E
in principal
Act.

3. The principal Act is amended by inserting next after section 75 the following as sections 75A, 75B, 75C, 75D and 75E—

“Supervisor
may re-
quire in-
formation.

75A.—(1) The Supervisor may require any company which is a member of a group of which a society is a member, or as the case may require, all companies within that group, to submit to the Supervisor, such information relating to the operations of that company or those companies, as the Supervisor considers necessary for the effective supervision of the society concerned.

(2) The information referred to in subsection (1) may be required for the purpose of determining—

- (a) the effect of the company’s operations on the society;
- (b) whether a member of the group is obtaining financing or other benefit, whether directly or indirectly from the society;
- (c) the general risks relating to the operations of the members of the group;
- (d) the risk management capabilities of the group as a whole;
- (e) whether the internal audit facilities within the group have the capability

to scrutinize transactions undertaken or proposed to be undertaken by the management of the group or a company within the group so as to determine whether there are associated risks.

(3) For the purposes of this section the Supervisor may—

- (a) require the information in the form of documents (including audited and consolidated accounts); or
- (b) summon any officer, directors or substantial shareholders of the company or companies concerned for the purposes of obtaining the information.

(4) A company which refuses to furnish information required under subsection (1) or any person who refuses to obey a summons issued to that person under subsection (3) (b), shall be guilty of an offence.

Restructuring of ownership of building society.

75B.—(1) Where a society is a member of a group and at least one member of that group is not a society or other regulated or supervised financial institution, the Supervisor may, in writing, direct the society to undertake—

- (a) a restructuring such that ownership of the society is directly held by a financial holding company which does not own the other companies within the group, unless those other companies are regulated or supervised financial institutions; or

(b) such other measures as may be necessary to properly identify, assess and manage—

- (i) the relationship between the companies in the group;
- (ii) the risks among members of the group;
- (iii) any other risks posed by external factors.

(2) The restructuring under subsection (1) shall be carried out within twelve months of the date of the direction, so, however, that the Supervisor may extend the period by notice in writing to the society.

(3) A society which wilfully refuses to comply with a direction under subsection (1) shall be guilty of an offence.

(4) Without prejudice to the operation of subsection (3), the Minister may revoke the licence of the society referred to in that subsection.

(5) Where a group is restructured, the Supervisor may—

- (a) examine and inspect the books of the society's financial holding company and any other company which is a subsidiary of the financial holding company and any subsidiary of that other company;
- (b) require the manager or any member of the group to provide information concerning its operations, so as to ascertain the likely effects of such operations on the society;

- (c) review changes in the ownership, directors and managerial personnel of the financial holding company and make recommendations to the Minister as regards those persons who do not meet the fit and proper criteria.

(6) Where a society is a member of a group and the society or any other member within the group has a relationship with a company that is not a member of the group, which poses a risk to the society and other members of the group, the Supervisor may—

- (a) treat the non-member as a member of the group; or
- (b) require the society or other member of the group to terminate the relationship.

(7) A financial holding company referred to in subsection (1) may be the ultimate holding company of the group or the immediate subsidiary of the ultimate holding company.

(8) The provisions of section 8B (3) shall apply with necessary modifications to every director and manager of an ultimate holding company or a financial holding company and its subsidiaries.

(9) The Supervisor may exempt from any provision of this section and section 75A any foreign financial holding company or foreign ultimate holding company where he is satisfied as to the matters specified in subsection (10).

(10) The Supervisor may take action under subsection (9) where he is satisfied—

- (a) as to the stringency of the fit and proper criteria applied by the competent authority in the country of incorporation of the foreign financial holding company or foreign ultimate holding company;
- (b) by the competent authority in the country of incorporation of the foreign financial holding company that—
 - (i) the foreign financial holding company is supervised on a consolidated basis; and
 - (ii) there are no impediments to the Supervisor's receipt of information as regards that foreign financial holding company from the head office thereof or the competent authority.

**Ownership
of sub-
sidiaries
by building
society.**

75C.—(1) Subject to subsection (2), a society may only own a subsidiary which is a regulated or supervised financial institution.

(2) The Supervisor may approve the ownership of a company by a society or its financial holding company if the business of that company is the provision of necessary support services to companies held by the financial holding company and its subsidiaries.

Supervisor
may issue
directions
re risk.

75D.—(1) The Supervisor may issue directions to a society, or its financial holding company, regarding the control of risks throughout the group.

(2) The directions referred to in subsection (1) may include—

- (a) capital requirements, including market risks on a group-wide basis;
- (b) limits on—
 - (i) large exposures;
 - (ii) intra group transactions;
 - (iii) holdings in any regulated or supervised financial institution.

(3) A society or financial holding company which fails to comply with directions under this section shall be guilty of an offence.

Manage-
ment or in-
vestment of
customer's
funds.

75E.—(1) A society shall not manage or invest funds on behalf of its customers unless such investment is carried out under a trust subject to regulations made under the Bank of Jamaica Act or the Standards of Best Practice issued from time to time by the Bank of Jamaica.

(2) A society that engages in proprietary trading in securities for its own account shall conform with the Standards of Best Practice referred to in subsection (1).”.

Insertion
of new
section 85
in princi-
pal Act.

4. The principal Act is amended by inserting next after section 84 the following as section 85—

“Secrecy of
society
officials.

85.—(1) Subject to subsection (2), no official of any society and no person who, by reason of his capacity or office has by any means access to the records of the society, or any registers, correspondence or material with regard to any customer’s accounts shall, while his employment in or, as the case may be, his professional relationship with the society continues or after the termination thereof, give, divulge or reveal any information regarding the money or other relevant particulars of that customer’s account.

(2) Subsection (1) shall not apply in any of the circumstances specified in the Eighth Schedule.

Eighth
Schedule.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.”.

Insertion of
new Eighth
Schedule in
principal
Act.

5. The principal Act is amended by inserting next after the Seventh Schedule the following as the Eighth Schedule—

“

EIGHTH SCHEDULE (Section 85(2))

*Circumstances in which information on customer’s
accounts may be disclosed*

Section 86(1) shall not apply in any case where—

- (a) the information is disclosed by an officer of a society to another officer of that society;

- (b) the customer or his personal representative gives written permission for disclosure of the information;
- (c) the customer is an undischarged bankrupt or, if the customer is a company, it is being wound up;
- (d) the information is disclosed in connection with civil proceedings—
 - (i) arising between the society and the customer relating to transactions carried out by the customer; or
 - (ii) brought by the society by way of interpleader in connection with competing claims by two or more parties to money in the customer's account;
- (e) the information is disclosed to an authorized officer;
- (f) the disclosure is made on the written direction of the Minister to the police or to a public officer who is duly authorized under the provisions of any law for the time being in force which requires such disclosure for the purpose of the investigation or prosecution of a criminal offence;
- (g) the society has been served with a court order attaching money in the account of the customer;
- (h) the Minister in writing directs such disclosure to a foreign government or agency of such government where there exists between Jamaica and such foreign government an agreement for the mutual exchange of information of such kind and the Minister con-

siders it in the public interest that such disclosure be made;

- (i) the Minister in writing directs such disclosure in the public interest;
- (j) the circumstances are such that it is in the interests of the society that the information be disclosed;
- (k) disclosure is required under another enactment;
- (l) disclosure is required by virtue of an order of the court, other than an order under paragraph (g).”

Transitional. 6.—(1) Every society which manages or invests funds on behalf of its customers shall within four weeks after the appointed day provide to the Supervisor a plan for effecting compliance with section 75E, and in particular for the removal or transfer to a separate legal entity, of funds invested on behalf of customers, which are subject to arrangements other than such trust arrangement as may be specified by Standards of Best Practice issued by the Bank of Jamaica or regulations issued pursuant to the Bank of Jamaica Act.

(2) Any plan provided to the Supervisor pursuant to subsection (1) shall be carried out within a period not exceeding one year, unless otherwise authorized in writing by the Supervisor.

(3) In subsection (1) “appointed day” means the date of commencement of the Building Societies (Amendment) Act, 2002.