

No. 46 of 2015.

Savings and Loan Societies Act 2015.

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No. of 2015.

Savings and Loan Societies Act 2015.

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No. of 2015.

An Act

entitled

Savings and Loan Societies Act 2015,

Being an Act to reform the law relating to savings and loan societies and to repeal and replace the ***Savings and Loan Societies Act*** (Chapter 141) and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the ***Constitution***, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (b) the right to freedom of employment conferred by Section 48; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51; and
- (e) the protection from unjust deprivation of property conferred by Section 53,

of the ***Constitution***, is a law that is made for the purpose of giving effect to the public interest in public welfare.

(2) For the purposes of Section 41 of the ***Organic Law on Provincial Governments and Local-level Governments*** it is declared that this law relates to a matter of national interest.

2. PURPOSE OF THIS ACT.

The purpose of this Act is -

- (a) to provide a modern framework for the establishment, regulation and prudent supervision of savings and loan societies; and
- (b) to protect the interests of members of savings and loan societies; and
- (c) to provide for co-operative financial institutions that are competitive, efficient and financially stable; and
- (d) to provide for alternative ownership and community based models for the provision of financial services or access to financial services.

3. INTERPRETATION.

(1) In this Act, unless the contrary intention appears -

“administrative matters” means matters which are necessary for the operation and performance of the functions of savings and loan societies, which may include but are not limited to, information technology platforms, banking platforms or accounting software.

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- “administrator” means a person appointed by the Central Bank to take control of a society’s business;
- “Board” in relation to a society means the board of directors of the society;
- “books” includes accounts, deeds, writings, documents and any other records of information however compiled, recorded or stored, and whether in written or printed form, on microfilm or in any other form;
- “Central Bank” means the Bank of Papua New Guinea established under the ***Central Banking Act 2000***;
- “chief executive” means, in relation to a society, a person who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the business of the society;
- “Court” means the National Court and courts hearing appeals from the National Court;
- “demutualise” means changing the legal status of a society to another legal form;
- “deposit” means a sum of money paid on terms under which it will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, and which terms are not referable to the provision of property or services or the giving of security;
- “director” -
- (a) with respect to companies registered in Papua New Guinea, has the same meaning as in Section 107(1)(a) of the ***Companies Act 1997***; and
 - (b) with respect to any other body corporate, means a person who occupies a position appearing to the Central Bank to be analogous to that of a director of a company under Section 107(1)(a) of the ***Companies Act 1997***;
- “existing society” means a society registered or deemed to be registered under the former Act or any corresponding previous law and includes an association registered under the former Act;
- “former Act” means the ***Savings and Loan Societies Act*** (Chapter 141) and the ***Savings and Loan Societies Regulations*** (Chapter 141);
- “General Reserve Fund” means the fund established under Section 19 of the ***Savings and Loan Society Regulations*** (Chapter 141A);
- “license” means a license to carry on business as a savings and loan society granted under Section 7;
- “manager” means, in relation to a society, a person (other than a chief executive) who, under the immediate authority of a chief executive or director of the society -
- (a) exercises managerial functions; or
 - (b) is responsible for maintaining the accounts or other records of the society; or
 - (c) manages or deals with the funds of a society and has the power to make decisions in respect of the use of those funds;
- “member” means a shareholder;
- “mutuality” means common ownership by members of a society to provide benefits for its members, where one share equals one vote.
- “net assets” means paid up capital and reserves;
- “officer” includes a director or employee of the body or entity;

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“prudential matters” in relation to a society means matters relating to the conduct by that society and any group of which it is a shareholder controller, of any of its affairs -

- (a) in such a way as -
 - (i) to keep itself in a sound financial position; and
 - (ii) not to cause or promote instability in the Papua New Guinea financial system; or
- (b) such that they are conducted with integrity, prudence and professional skill; or
- (c) which ensure compliance with the relevant obligations placed on the institution by or under this Act;

“prudential standard” has the meaning given under Section 16;

“shareholder” has the meaning set out in the *Companies Act 1997*;

“society” and “savings and loan society” means a body corporate incorporated under the *Companies Act 1997* and licensed as a savings and loan society under this Act;

“subsidiary” has the meaning given by Subsection (2);

“this Act” includes the Regulations and prudential standards made under this Act.

(2) For the purposes of this Act, the question whether a body corporate is subsidiary or holding company or a related company of another body corporate is to be determined in the same way as that question is determined for the purposes of the *Companies Act 1997*.

4. APPLICATION OF COMPANIES ACT 1997.

The requirements of this Act in relation to a body corporate are in addition to and not in derogation of or substitution for the requirements of the *Companies Act 1997* but in the case of an inconsistency between a provision of this Act and a provision of the *Companies Act 1997*, the provisions of this Act prevail to the extent of the inconsistency.

PART II. - FUNCTIONS AND POWERS OF THE CENTRAL BANK.

5. FUNCTIONS OF THE CENTRAL BANK.

(1) The principal function of the Central Bank under this Act shall be to promote the general stability through balancing the objectives of financial safety and efficiency, competition, contestability and competitive neutrality, and the regulation and supervision of the savings and loan societies movement in Papua New Guinea.

(2) The Central Bank shall have the powers conferred on it by this Act and the duty generally to supervise the societies authorised by it in the exercise of those powers.

- (3) The functions of the Central Bank under this Act include -
- (a) licensing of societies; and
 - (b) protection of the interests of members and potential members of societies; and
 - (c) supervising compliance with this Act; and
 - (d) the collection and analysis of information in respect of prudential matters relating to societies; and
 - (e) promoting, encouraging and enforcing proper standards of conduct and sound and prudent business practices by societies including preserving the mutuality of societies; and
 - (f) issuing prudential standards.

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6. POWERS OF THE CENTRAL BANK.

The Central Bank has all the powers of a natural person to do, in Papua New Guinea or elsewhere, all things necessary or convenient to be done for or in connection with the achievement of its functions under this Act.

PART III. - LICENSING OF SAVINGS AND LOAN SOCIETIES.

7. APPLICATION FOR LICENSE.

(1) Subject to this Act, a company incorporated under the *Companies Act 1997* that desires authority to carry on business as a savings and loan society -

- (a) to promote thrift among its members; and
- (b) to educate its members in financial responsibility; and
- (c) to receive the savings of its members as contributions in the form of savings deposits; and
- (d) to make loans to its members for any of the purposes specified in this Act,

may apply, in writing, to the Central Bank for a license to carry on business as a savings and loan society.

(2) The application under Subsection (1) shall -

- (a) be in a form prescribed by the Central Bank; and
- (b) be accompanied by -
 - (i) details of the name and registered address of the applicant; and
 - (ii) the names and addresses of each of the directors of the applicant and of the secretary, if any; and
 - (iii) a copy of the constitution of the applicant; and
 - (iv) such other particulars as are prescribed, or required by the Central Bank; and
- (c) be accompanied by the prescribed application fee.

(3) The Central Bank may grant a license in the name of the applicant if it is satisfied with regard to the criteria set out in Schedule 1.

(4) A license shall be in the prescribed form and the Central Bank shall give the applicant written notice of the granting of the license.

(5) Where the Central Bank grants a license under this section the Central Bank -

- (a) shall cause notice of the license to be published in the National Gazette; and
- (b) may cause notice of the license to be published in any other way it considers appropriate.

(6) A license may be granted subject to conditions which may be revoked or varied in accordance with this Act.

(7) A license is personal to the company to which it was granted, and is incapable of being transferred.

(8) Notwithstanding Subsection (2), an existing society that converts to a society under this Act shall not be required to pay an application fee.

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8. NAME OF SAVINGS AND LOAN SOCIETY.

(1) A person or body corporate shall not, without the consent in writing of the Central Bank -

- (a) use the words “savings and loan” or any other word indicating the transaction of the business of a savings and loan society, in the name, description or title under which that person carries on business in the country; or
- (b) make any representation that he is, or hold himself out to be, a savings and loan society.

(2) Subject to Subsection (1), the name of a body corporate licensed as a savings and loan society under this Act shall contain in it the phrase “Savings and Loan Society”.

(3) The Central Bank shall cause notice of -

- (a) the license granted under Section 7; and
- (b) its consent granted under Subsection 1,

to be given to the Registrar of Companies.

(4) Where notice under Subsection (3) is given to the Registrar of Companies, the holder of the license is deemed to have changed its name in accordance with Part IV of the *Companies Act 1997* and the notice under this subsection shall be in the form prescribed in Section 4 of the Regulations.

(5) Notwithstanding Subsection (4), where a society has changed its name, it shall give written notice to the Central Bank of the change of name within one month of the change of name occurring.

(6) A society that uses a name other than the name by which it is registered under this Act is guilty of an offence.

9. DIRECTORS, CHIEF EXECUTIVES AND MANAGERS OF SAVINGS AND LOAN SOCIETIES TO BE FIT AND PROPER.

(1) A society shall ensure that all directors, chief executives and managers satisfy -

- (a) the criteria specified in Schedule 1; and
- (b) any relevant prudential standards.

(2) The Central Bank may, at any time, by giving notice in writing served on -

- (a) any person who is, or is to be, a director, chief executive or manager of a society; or
- (b) the society concerned,

require that person or the society, as the case may be, to provide the Central Bank, within such time as may be specified in the notice, with such information or documents as the Central Bank may reasonably require for determining whether that person is a fit and proper person to hold the particular position which he holds or is to hold.

(3) The Central Bank may serve a notice of objection to a director, chief executive, or manager, as the case may be, and the society concerned, stating the person concerned is not a fit and proper person to hold that particular position.

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(4) Before serving a notice of objection under Subsection (3), the Central Bank shall serve the person and the society with a preliminary written notice stating that the Central Bank is considering the service on those persons of a notice of objection, and such preliminary notice shall -

- (a) specify the reasons for which it appears to the Central Bank that the person in question is not or is no longer a fit and proper person; and
- (b) specify the action proposed to be taken by the Central Bank; and
- (c) give particulars of the rights conferred by Subsection (5).

(5) A person or the society to be served with a notice under Subsection (3) may, within the period of 28 days beginning on the day on which the preliminary notice under Subsection (4) is served, make written representations to the Central Bank, and where such representations are made, the Central Bank shall take them into account in deciding whether to serve a notice of objection under Subsection (3).

(6) After giving a notice under Subsection (4) and taking into account any representation made under Subsection (5), the Central Bank shall decide whether -

- (a) to proceed with the action proposed in the notice under Subsection (4); or
- (b) to take no further action; or
- (c) to impose other conditions or additional conditions on the person holding that particular position.

(7) A notice of objection under this section shall specify the reasons why the Central Bank is not satisfied that the person is fit and proper.

(8) Subsections (4) and (7) shall not require the Central Bank to specify any reason which would, in the opinion of the Central Bank, involve the disclosure of protected information or disclose information which would be prejudicial to a third party.

(9) A notice under Subsection (3) shall be given -

- (a) within the period of 28 days beginning on the day on which the representation under Subsection (5) was made to the Central Bank; or
- (b) where no representation was made to the Central Bank under Subsection (5), within a period of 42 days beginning on the day on which the notice under Subsection (4) was given.

(10) Where the Central Bank has served a notice of objection under Subsection (3) -

- (a) the Central Bank may suspend the person concerned from office pending the outcome of the Central Bank's investigations under this section, and may remove the suspension at any time; and
- (b) unless otherwise determined by the Central Bank, the suspension shall be on full pay.

(11) Where it appears to the Central Bank to be necessary or desirable in the interests of members or potential members in a society, it may also exercise the powers conferred by Subsections (1), (2) and (3) in relation to a body corporate which is or has, at any relevant time, been a subsidiary of that society.

10. MINIMUM CAPITAL.

(1) Notwithstanding Section 7(3) of this Act, the Central Bank may only grant a license to an applicant if it is satisfied that the proposed society will be viable.

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(2) The Central Bank may require an applicant to furnish a statement regarding the viability of its activities and the applicant's sources of anticipated capital.

(3) A society shall, within one year, or such further time as prescribed by the Central Bank, from the date of issue of a license under this Act, bring its net assets up to the relevant amount specified in Section 5 of the Regulation.

(4) Where the relevant amount specified in Section 5 of the Regulation is increased, every society shall, within one year, bring its net assets up to the increased amount.

(5) An existing society that has procured a license under Section 7 shall, within one year or such further time as prescribed by the Central Bank from the date of issue of the license, bring its net assets up to the relevant amount specified in Section 5 of the Regulation.

11. CONDITIONS ON LICENSE.

(1) The Central Bank may, at any time by notice in writing, served on a society -
(a) impose conditions or additional conditions on the license of the society; and
(b) vary or revoke such conditions.

(2) The conditions referred to in Subsection (1) must relate to prudential matters and may also include administrative matters.

(3) A condition may be expressed to have effect notwithstanding anything in the prudential standards or the regulations.

(4) Without limiting the generality of this section, the conditions imposed under this section may do any one or more of the following:

- (a) require the society to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way; and
- (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments; and
- (c) prohibit the society from soliciting deposits; and
- (d) prohibit the society from entering into any transaction or class of transactions.

(5) A society shall -

- (a) within 28 days after the date of grant of its license under Section 7, pay to the Central Bank the prescribed license fee specified in Section 26 of the Regulations; and
- (b) after that, pay to the Central Bank on or before 1 January in each year the prescribed license fee prescribed in Section 26 of the Regulations.

(6) A society which fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section is guilty of an offence.

(7) The penalty is prescribed in Schedule 3.

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12. REVOCATION OF LICENSE.

The Central Bank may revoke the license of a society where it appears to the Central Bank that -

- (a) any of the criteria specified in Schedule 1 have not been or are not being fulfilled; or
- (b) the society has failed to comply with any obligation imposed on it by or under this Act; or
- (c) the society has failed to comply with any condition imposed on the license; or
- (d) the society has failed to comply with Section 10; or
- (e) the society has failed to comply with any prudential standard or directive; or
- (f) the Central Bank has been provided with false, misleading or materially inaccurate information -
 - (i) by or on behalf of the society; or
 - (ii) in connection with an application for a license; or
 - (iii) by or on behalf of a person who is a director, chief executive or manager of the society; or
- (g) the interests of members or potential members of the society are in any way threatened, whether by the manner in which the society is conducting or proposes to conduct its affairs or for any other reason; or
- (h) the society -
 - (i) has not commenced business within the period of six months beginning with the day on which it was licensed; or
 - (ii) has suspended business for a period of more than six months; or
- (i) any of the following has occurred with respect to the Society -
 - (i) a composition or arrangement with creditors has been made in respect of the society; or
 - (ii) a receiver or manager or liquidator (including interim liquidator) has been appointed; or
 - (iii) possession has been taken, by or on behalf of the holders of any debenture secured by charge, of any property of the society comprised in or subject to the charge; or
 - (iv) it has ceased to carry on business, gone into liquidation or has been wound up or dissolved or if anything having an analogous effect has occurred; or
 - (v) the society has properly demutualised.

13. NOTICE OF CONDITIONS AND REVOCATION.

- (1) Where the Central Bank proposes to -
 - (a) revoke a license; or
 - (b) impose a condition or additional conditions on a license; or
 - (c) vary or revoke the conditions imposed on a license otherwise than with the agreement of the society concerned,

the Central Bank shall give to the society concerned not less than 28 days prior written notice of its intention to do so.

(2) Where the proposed action is within Subsection 1(b) or (c), the notice shall specify the proposed conditions or the proposed variation, as the case may be.

(3) A notice under Subsection (1) shall state the reasons why the Central Bank proposes to act and give particulars of the society's rights under Subsection (4).

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(4) A society which is given notice under Subsection (1) may, within a period of 28 days beginning on the day on which the notice was given, make written representations to the Central Bank.

(5) After giving a notice under Subsection (1) and taking into account any representations made under Subsection (4), the Central Bank shall decide whether -

- (a) to proceed with the action proposed in the notice; or
- (b) to take no further action; or
- (c) where the proposed action was to revoke the society's license, to impose conditions on its license instead; or
- (d) where the proposed action was to vary conditions on the society's license, to vary the conditions in a different manner.

(6) The Central Bank shall give the society written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision.

(7) A notice under Subsection (6) of a decision to revoke or impose conditions on a license shall have the effect of revoking the license or imposing conditions on the license or varying conditions in the manner specified in the notice, as the case may be.

(8) A notice under Subsection (6) shall be given -

- (a) within the period of 42 days beginning on the day on which the representations under Subsection (4) were made to the Central Bank; or
- (b) where no representation was made to the Central Bank under Subsection (4), within a period of 28 days beginning on the day on which the notice under Subsection (1) was given.

14. CONDITIONS AND REVOCTION IN CASES OF URGENCY.

(1) No notice needs to be given under Section 13 in respect of -

- (a) the revocation of the license of a society where it appears to the Central Bank that -
 - (i) a winding up order has been made against the society; or
 - (ii) the society is insolvent or there is significant risk that the society will become insolvent; or
- (b) the imposition or variation of conditions on the license of a society in any case where the Central Bank considers that the conditions should be imposed or varied as a matter of urgency in order to protect the interests of members.

(2) In any case to where Subsection (1) applies, the Central Bank may by written notice to the society immediately revoke the license or impose or vary the conditions on the license.

(3) A notice under Subsection (2) shall state the reasons for which the Central Bank has acted and particulars of the rights conferred by Subsection (4).

(4) A society to which notice is given under this section may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Central Bank.

(5) After giving a notice under Subsection (2) and taking into account any representations made in accordance with Subsection (4), the Central Bank shall decide whether -

- (a) to confirm or rescind its original decision; or

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(b) to impose a different condition or vary the conditions in a different manner.

(6) The Central Bank shall, within the period of 28 days beginning on the day on which the notice was given under Subsection (2), give the society concerned written notice of its decision under Subsection (5), and except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(7) Where a notice under Subsection (6) is a decision to take action specified in Subsection (5)(b), the notice under Subsection (6) shall have the effect of imposing the condition or making the variation specified in the notice and with effect from the date on which it is given.

(8) Where the notice of the proposed revocation of a society's license under Section 13 is followed by a notice revoking its license under this section, the latter notice shall have the effect of terminating any right to make representations under Section 13.

15. SURRENDER OF LICENSE.

(1) A society may, by notice in writing to the Central Bank, request approval to surrender its license.

(2) The Central Bank may accept a request under Subsection (1) where it is satisfied that the surrender would not be contrary to the interests of members of the society.

(3) The surrender will take effect on such date as may be specified by the Central Bank by notice, in writing, to the society.

(4) The Central Bank shall publish notice of the surrender in the National Gazette.

PART IV. - PRUDENTIAL SUPERVISION.

16. THE CENTRAL BANK MAY MAKE PRUDENTIAL STANDARDS.

(1) The Central Bank may, in writing, determine prudential standards in relation to prudential matters to be complied with by -

- (a) savings and loan societies; or
- (b) one or more specified savings and loan societies.

(2) A prudential standard may impose different requirements to be complied with by societies depending on their size and the types of activities they are involved in.

(3) The Central Bank may, at any time determine, vary or revoke a prudential standard.

(4) A prudential standard -

- (a) comes into force -
 - (i) unless Subparagraph (ii) applies, on the day on which the determination of the prudential standard is made; or
 - (ii) where that determination specifies a later day as the day on which the prudential standard comes into force, on the day so specified; and
- (b) continues in force until it is revoked.

(5) Subject to Subsection (6), the Central Bank shall circulate to all societies and shall publish in such manner as it thinks fit, each prudential standard, and any variation or revocation of such standard.

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(6) Where the Central Bank considers that a prudential standard or any variation or revocation of a prudential standard contains commercially sensitive or confidential information, the Central Bank -

- (a) is not required to circulate or publish that information under Subsection (5); and
- (b) may include some or all of that information in the circulation or publication under Subsection (5) where the Central Bank considers it appropriate to do so.

(7) A failure to comply with this section does not affect the validity of the variation or revocation of the prudential standard concerned.

(8) A society that fails to comply with a prudential standard issued under this section, is guilty of an offence.

17. SCOPE OF PRUDENTIAL STANDARDS.

The Central Bank may issue prudential standards applicable to the operation of societies and the officers of societies and any other entity for the purposes of this Act, which it considers necessary to implement, and ensure compliance with, the provisions of this Act.

18. PART NOT TO LIMIT OPERATION OF OTHER PROVISIONS.

Nothing in this Part is intended to limit the operation of any other provision of this Act or of the *Central Banking Act 2000*.

PART V. - INFORMATION AND INVESTIGATION.

19. ALTERATION OF RECORDS.

(1) A society shall submit to the Central Bank for approval any proposed alteration of the constitution or other constituent documents of the society.

(2) A society must give written notice to the Central Bank if any person has become or ceased to be a director, a chief executive, manager or auditor of the society.

(3) A society which fails to supply the information or give a notice required by this section, is guilty of an offence.

20. RETURNS TO BE SUBMITTED BY SOCIETIES.

(1) Not later than three months after the end of its financial year, every society must submit to the Central Bank its audited financial statements together with such other information as may be prescribed by this Act or requested by the Central Bank from time to time.

(2) The financial statements and any other information required by the Central Bank must be supplied, notwithstanding anything to the contrary contained in any law including the *Companies Act 1997*.

(3) Where the Central Bank considers that reports or returns submitted under this section are inadequate, inaccurate, misleading or otherwise unsatisfactory in relation to standards as determined, the Central Bank may direct, in writing, the provision of explanations and variations in respect of returns submitted.

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(4) Written directions provided under Subsection (3) shall specify the time within which explanations and variations shall be provided, and such time shall not be less than 14 days.

(5) Where directions as to variations have been given under Subsection (3), any document to which the direction relates shall be deemed not to have been lodged until it is resubmitted with the variations required by the direction, but the document will be deemed to have been submitted within any prescribed time limit if it is resubmitted in satisfactory form within the time limit specified in the direction.

(6) A society shall, upon reasonable request, make available to current members a copy of the latest annual audited financial statements.

(7) A society, which fails to comply with the reporting requirements set out in this section, is guilty of an offence.

21. INVESTIGATION ON BEHALF OF THE CENTRAL BANK.

(1) Where it appears to the Central Bank desirable to do so in the interests of members or potential members of a society, the Central Bank may appoint one or more competent persons to investigate and report to the Central Bank on -

- (a) the nature, conduct or state of the society's business or any particular aspect of it; or
- (b) the ownership or control of the society,

and the Central Bank shall give written notice of any such appointment to the society concerned.

(2) Where a person appointed under Subsection (1) thinks it necessary for the purposes of his investigation, he may also investigate -

- (a) the business of any body corporate which is or has been a subsidiary of the society; or
- (b) any other business including a partnership or joint venture in which that society is or has been, at any relevant time, a participant.

(3) Where a person appointed under Subsection (1) decides to investigate the business of any body by virtue of Subsection (2), he shall give it written notice to that effect.

(4) It shall be the duty of every person who is or was a director, chief executive, manager, employee, agent, banker, auditor or lawyer of a body which is under investigation, whether by virtue of Subsection (1) or (2), in relation to that society -

- (a) to produce to the persons appointed under Subsection (1), within such time and at such place as they may require, all documents which are in his custody or power relating to the society concerned; and
- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) to give those persons all assistance in connection with the investigation which he is reasonably able to give; and
- (d) to otherwise co-operate fully with a person appointed under Subsection (1),

and those persons may take copies of or extracts from any documents produced to them under Paragraph (a).

(5) The foregoing provisions of this section shall apply to a former licensed Society as they apply to a society.

(6) A person, who fails to comply with Subsection (4), is guilty of an offence.

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22. BANK'S POWERS OF INSPECTION.

(1) The Central Bank or a person appointed by the Central Bank may, at any time, inspect and examine any accounts, books or records of a society in performing its role as the regulator of savings and loan societies.

(2) Any person who has possession, custody or control of any such accounts, books or records must produce the accounts, books and records to the Central Bank or the person so authorised who can make copies of or take extracts from any of them.

23. BANK'S POWERS OF INVESTIGATION.

(1) The Central Bank or a person authorised by the Central Bank for the purpose may, at any time during the ordinary hours of business, do all or any of the following:

- (a) enter any land or place where any person -
 - (i) is acting as; or
 - (ii) is carrying on or is reasonably suspected by the Central Bank to be acting as or carrying on, business as, a savings and loan society; and
- (b) make such examination and inquiries as are necessary to ascertain the manner in which any business referred to in Paragraph (a) is being carried on and, in particular, whether the provisions of this Act have been or are being complied with, in respect of that business; and
- (c) examine any person engaged or apparently engaged, whether as principal or employee, in the business, and require that person -
 - (i) to answer any question put to him; and
 - (ii) to furnish such information as may be required; and
 - (iii) to sign a declaration as to the truth of any answer given by him.

(2) A person who -

- (a) assaults, resists or obstructs any person authorised by the Central Bank in the exercise of his powers or the discharge of his duties under this section; or
- (b) fails or refuses to answer any question put to him by the Central Bank or a person authorised by the Central Bank, or gives a false or misleading answer to any such question; or
- (c) fails or refuses to comply with a request of the Central Bank or a person authorised by the Central Bank; or
- (d) when required to furnish information under this Act by the Central Bank or a person authorised by the Central Bank -
 - (i) fails or refuses to give the information; or
 - (ii) gives false or misleading information; or
- (e) fails or refuses, without reasonable excuse, proof of which is on him -
 - (i) to produce any books, accounts or records that he is required to produce under this Act by the Central Bank or a person authorised by the Central Bank; or
 - (ii) to allow the Central Bank or a person authorised by the Central Bank to make copies of or take extracts from any such books, account or record; or
- (f) directly or indirectly prevents any person from appearing before or being questioned by the Central Bank or a person authorised by the Central Bank; or

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- (g) uses any threatening, abusive or insulting language to a person authorised by the Central Bank whilst he is carrying out an authorised inspection under this Act,
is guilty of an offence.

24. PROTECTION OF PERSONS SUPPLYING INFORMATION TO THE CENTRAL BANK.

(1) Where a member, director, officer or staff member of a society supplies information to the Central Bank, either on his own initiative or in pursuance of a requirement by the Central Bank, no disciplinary or other action, to the prejudice of that person, shall be taken by any person, in respect of that supply of information.

(2) A person, who knowingly or recklessly provides the Central Bank or any other person with information which is false or misleading in a material particular, is guilty of an offence where the information is provided -

- (a) in purported compliance with a requirement imposed by or under this Act; or
- (b) otherwise than as mentioned in Paragraph (a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used by the Central Bank for the purpose of exercising its functions under this Act.

25. POWERS OF DIRECTION.

(1) Following the conduct of an investigation under Sections 21, 22 and 23 and the issue of a written summary and conclusions, the Central Bank may, subject to Subsection (2), issue directives to a society to overcome any breaches of this Act or to protect the interests of the members, potential members or former members.

(2) Notwithstanding Subsection (1), the Central Bank does not have to conduct a formal investigation under Sections 21, 22 and 23 to issue a direction and does not have to issue a written summary and conclusion and allow for a society to reply.

(3) The powers of the Central Bank under Subsection (1) to direct, shall include, but shall not be confined to, the following matters:

- (a) the dismissal and recruitment of directors, management personnel and other related persons; and
- (b) the undertaking of sound management principles; and
- (c) the disposition or recovery of assets; and
- (d) the issue of directives on investment management, subject to overall investment guidelines issued by the Central Bank; and
- (e) the recovery of sums considered illegally paid; and
- (f) the issue of any other directive considered necessary following the conduct of an investigation; and
- (g) cease or desist including not entering into contracts, making commitments regarding future costs, engaging staff, payment of bonuses, taking trips or leaving the country, cancelling savings and loan society paid-for trips, lending to related parties and business to related parties.

(4) A society who fails or neglects to comply with a directive under this section is guilty of an offence.

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PART VI. - POWER TO TAKE CONTROL OF A SOCIETY.

26. CONSEQUENCES OF INABILITY OR FAILURE OF A SOCIETY TO MEET OBLIGATIONS.

The Central Bank may take control of the business of a society or appoint an administrator to take control of the business of a society where -

- (a) the society informs the Central Bank that the society considers that it is likely to become unable to meet its obligations or that it is about to suspend payment; or
- (b) the Central Bank considers that the society is likely to become unable to meet its obligations or is about to suspend payment; or
- (c) in the opinion of the Central Bank, the interests of the members and depositors of the society are materially threatened by serious or systematic weaknesses in governance, risk management, administration, security or failures to meet prudential standards, conditions of license or directions; or
- (d) the society fails to comply with the requirement for mutuality.

27. STATUTORY MANAGERS - TERMINATION OF CONTROL.

(1) Where the Central Bank assumes control of the business of a society or appoints an administrator to assume control of the business of a society, the Central Bank shall ensure that either it or the administrator of the business of the society has control of the business of the society until -

- (a) the following conditions are satisfied:
 - (i) the deposits of the society have been repaid or the Central Bank is satisfied that suitable provision has been made for their repayment; or
 - (ii) the Central Bank considers that it is no longer necessary for it or the administrator to remain in control of the business of the society; or
- (b) the Central Bank considers that the society is insolvent and is unlikely to be returned to solvency within a reasonable time, and the Central Bank has applied for the society to be wound up under the *Companies Act 1997*.

(2) Before finally terminating control of a statutory manager of the business of the society, the Central Bank shall -

- (a) ensure that directors of the society have been appointed or elected under the constitution of the society at a meeting called by the statutory manager of the society in accordance with the constitution of the society; and
- (b) appoint directors of the society by instrument in writing; and
- (c) ensure that a liquidator for the society has been appointed.

(3) Where the requirements in Subsections (1) and (2) are satisfied, the Central Bank may, by instrument in writing, terminate the control of the business of the society by a statutory manager.

(4) Where a director is elected or appointed under Subsection (2), the director takes office on the termination of the control by the statutory manager of the business of the society.

(5) Where a director was appointed by the Central Bank, he holds office until the next annual general meeting of the society, subject to any terms and conditions imposed by the Central Bank on the director's appointment, and where a director was appointed or elected under the constitution of the society, the constitution governs the appointment.

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28. POWERS AND FUNCTIONS OF A STATUTORY MANAGER.

(1) A statutory manager has the powers and functions of the directors of the society, collectively and individually, including the board's powers of delegation.

(2) A statutory manager may, for the purposes of this Part, require the society or a person who has, at any time, been an officer of the society to give the statutory manager any information relating to the business of the society that the statutory manager requires.

(3) A society or any other person who fails to comply with any requirement to give information under Subsection (2) is guilty of an offence.

(4) A statutory manager may on any terms and conditions that he considers appropriate, sell or otherwise dispose of the whole or any part of the business of the society.

29. LIABILITIES AND DUTIES OF A STATUTORY MANAGER.

(1) Where a society incurs any loss because of any fraud, dishonesty, gross negligence or wilful failure to comply with this Act by the statutory manager, the statutory manager is liable for the loss.

(2) A statutory manager is not liable for a loss that is not a loss incurred because of fraud, dishonesty, gross negligence or wilful failure to comply with this Act.

(3) Where the statutory manager is an administrator of the business of the society, the administrator must provide the details of the loss, in written report, to the Central Bank, but failure to do so does not make the administrator liable for the loss.

(4) A statutory manager is not to be taken to be a director for the purposes of Sections 107, 348 and 350 of the *Companies Act 1997*.

30. ADMINISTRATOR IN CONTROL - ADDITIONAL DUTIES.

(1) A person who is an administrator of the business of a society shall give to the Central Bank a written report showing how the control of the business of the society is being carried out where the Central Bank requests that such a report be provided to it.

(2) A person who is an administrator of the business of a society shall, on the termination of his appointment, give to the Central Bank a written report showing how the control of the business of the society was carried out over the period of the administrator's appointment.

(3) The Central Bank may give an administrator of the business of a society a direction relating to the control of the business of the society and may alter such a direction and where a direction, including an altered direction, is given to an administrator, the administrator shall -

- (a) act in accordance with the direction; and
- (b) immediately provide to the Central Bank information relating to the control of the business of the society and request the Central Bank to alter the direction.

(4) Where an administrator of the business of a society requests the Central Bank to alter a direction and the Central Bank, after considering the request, confirms the direction, the administrator shall act in accordance with the direction.

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31. TERMINATION OF APPOINTMENT OF ADMINISTRATOR.

(1) Where an administrator of a business of a society contravenes a requirement under this Act, the Central Bank may terminate the appointment of the administrator.

(2) The terms and conditions of the appointment of the administrator may provide for termination in circumstances in addition to those mentioned in Subsection (1).

(3) This section has effect subject to Section 26.

32. EFFECT ON DIRECTORS OR STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF A SOCIETY.

(1) The directors of a society cease to hold office when a statutory manager takes control of the business of the society.

(2) A director of a society shall not be appointed or elected while a statutory manager is in control of the business of the society unless the appointment is made under Section 27(2).

(3) Where a person who ceased to hold office under Subsection (1), or a purported director of the society appointed or elected in contravention of Subsection (2), purports to act in relation to the business of the society, those acts are invalid and of no effect.

33. EFFECT ON EXTERNAL ADMINISTRATOR OR STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF A SOCIETY.

(1) The appointment of an external administrator of a society is terminated when a statutory manager takes control of the business of the society.

(2) An external administrator of a society shall not be appointed while a statutory manager is in control of the business of a society unless the Central Bank approves the appointment.

(3) Where a person who ceased to be the external administrator of a society under Subsection (1), or a purported external administrator of a society appointed in contravention of Subsection (2), purports to act in relation to the business of the society while a statutory manager has control of the business of the society, those acts are invalid and of no effect.

(4) The Central Bank shall inform the external administrator of a society that a statutory manager has control of the business of the society as soon as possible after the decision that a statutory manager will take control of the business of a society is made, but failure to inform the external administrator does not affect the operation of this section.

(5) Notwithstanding Subsections (1) to (4), where necessary, the external administrator, statutory manager and the liquidator can be the same person.

34. EFFECT ON LEGAL PROCEEDINGS OF STATUTORY MANAGER TAKING CONTROL OF THE BUSINESS OF A SOCIETY.

(1) A person cannot begin or continue a proceeding in a court against a society while a statutory manager is in control of the business of the society unless -

(a) the Court grants leave on the ground that the person would be caused hardship if leave were not granted; or

(b) the Central Bank consents to the proceedings beginning or continuing.

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(2) A person intending to apply for leave of the Court under Subsection (1)(a) shall give the Central Bank at least 10 days' notice of the intention to apply, and the Central Bank may apply to the Court to be joined as a party to the proceedings for leave.

(3) In this Section, a reference to a proceeding against a society includes a reference to a cross-claim or third party claim against a society.

35. STATUTORY MANAGER BEING IN CONTROL NOT GROUNDS FOR DENIAL OF OBLIGATIONS.

(1) Subject to Subsection (2), the fact that a statutory manager is in control of the business of a society is not a ground for any other party to a contract to which the society is a party -

- (a) to deny any obligations under that contract; or
- (b) to accelerate any debt under that contract; or
- (c) to close out any transaction relating to that contract.

(2) The Head of State, acting on the advice of the Central Bank, may by regulation prescribe circumstances under which Subsection (1) does not apply.

36. COSTS OF STATUTORY MANAGEMENT.

The costs incurred by the Central Bank, including costs in the nature of remuneration and expenses, of being in control of the business of a society, or of having an administrator in control of the business of a society are a debt due to the Central Bank.

37. CENTRAL BANK TO GIVE NOTICE OF STATUTORY MANAGEMENT.

Where the Central Bank appoints a statutory manager or terminates his appointment, the Central Bank shall publish a notice of that fact in the National Gazette, but failure to publish such a notice does not affect the validity of the act.

38. POWERS OF THE CENTRAL BANK TO APPLY FOR SOCIETY TO BE WOUND UP.

(1) The Central Bank may apply to the National Court for an order that a society be wound up where the Central Bank considers that the society is insolvent and could not be restored to solvency within a reasonable period.

(2) The winding up of a society is to be conducted in accordance with the *Companies Act 1997* or any other law under which the society is incorporated or is taken to be incorporated.

PART VII. - SURVEILLANCE OF DEPOSIT ADVERTISING.

39. INVITATION TO MAKE DEPOSITS.

(1) Regulations may be made for the issue, form and content of deposit advertisements.

(2) Regulations under this section may make different provision for different cases and, without prejudice to the generality of Subsection (1), may -

- (a) prohibit the issue of advertisements of any description, whether by reference to their contents or to the persons whom they are issued to; or
- (b) make provision with respect to matters which must be, as well as matters which may not be, included in advertisements; or
- (c) provide for exemptions for any probation or requirements imposed by the regulations.

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40. ADVERTISEMENTS.

(1) Where the Central Bank is of the opinion that an advertisement issued in connection with savings and loan business makes a statement or a representation that is false, misleading or deceptive, the Central Bank may, by notice in writing served on the person or persons who arranged the advertisement, require them to withdraw or, as the circumstances require, remove and to cease issuing such advertisements and the person or persons served with such a notice shall, comply with that notice.

(2) Subject to Subsection (3), a person who issues or causes to be issued an advertisement, the issue of which is prohibited by regulations or by this Part or which does not comply with any requirements imposed by regulations or by this Part, is guilty of an offence.

(3) A person whose business it is to publish or to arrange for the publication of advertisements is not guilty of an offence under this section where he proves -

- (a) that he received the advertisement for publication in the ordinary course of his business; and
- (b) that the matters contained in the advertisement were not, wholly or in part, devised or selected by him or by any persons under his direction or control; and
- (c) that he did not know and had no reason for believing that publication of the advertisement would constitute an offence.

41. FALSE OR MISLEADING INDUCEMENT TO MAKE A DEPOSIT.

A person who -

- (a) makes or attempts to make a statement, promise, forecast or information which he knows or ought reasonably to have known to be misleading, false or deceptive or dishonestly conceals any material facts; or
- (b) recklessly makes or attempts to make (dishonestly or otherwise) a statement, promise or forecast or disseminates information which is misleading, false or deceptive,

is guilty of an offence where he makes or attempts to make the statement, promise or forecast or disseminates the information or conceals the facts for the purpose of inducing, or is reckless as to whether it may induce another person -

- (c) to make, or refrain from making, a deposit with him or any other person; or
- (d) to enter, or refrain from entering, into an agreement for the purpose of making such a deposit.

PART VIII. - SECRECY.

42. SECRECY.

(1) In this part -

“produce” includes permit access;

“protected document” means a document given or produced, whether before or after the commencement of this Act, under or for the purposes of, this Act, and containing information relating to the affairs of any person other than a document that has already been lawfully made available to the public;

“protected information” means information, data or forecasts disclosed or obtained, whether before or after the commencement of this Act, under or for the purposes of, this Act, and containing information relating to the affairs of any person other than a document that has already been lawfully made available to the public.

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(2) Subject to this section, a person shall not, except for the purposes of this Act, directly or indirectly disclose to any person, any protected information or protected document acquired by that first mentioned person.

(3) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document, where the person to whose affairs the information or document relates to and, where different, the person from whom the information or document was received, agrees in writing, to the disclosure of the information or the production of the document, as the case may be.

(4) It is not an offence where the disclosure of the protected information or the production of a protected document by a person occurs when the person is satisfied that the disclosure of the information, or the production of the document, will assist the Central Bank to perform its functions or exercise its powers.

(5) It is not an offence where the disclosure of the protected information or the production of information of a protected document by the Central Bank occurs when the Central Bank is satisfied that the disclosure of the information, or the production of the document -

(a) will assist the Central bank to perform its functions or exercise its powers; or

(b) will assist another financial supervisory agency, whether in Papua New Guinea or elsewhere, to perform its functions or exercise its powers,

provided that the Central Bank is satisfied that the information or document is subject to a secrecy provision no less stringent than that set out in this Act.

(6) It is not an offence where the disclosure of the protected information or the production of a protected document is under compulsion of obligation of law.

(7) Subsection (2) does not prohibit a person from disclosing protected information, or producing a protected document to the Central Bank.

(8) Subsection (2) does not prohibit a person from disclosing information, or producing a document, where the information, or the information contained in the document, as the case may be, is in the form of a statistical summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.

(9) A person who contravenes this Part is guilty of an offence.

PART IX. - MISCELLANEOUS.

43. INSPECTION OF DOCUMENTS.

A person may, on payment of the prescribed fee in Section 22 of the Regulations -

(a) inspect at the Central Bank, and obtain from the Central Bank a certified copy of the license of a society; and

(b) with the permission of the Central Bank, inspect at the offices of the Central Bank and obtain a copy of the last set of audited financial statements, referred to in Section 20, of a society.

44. DISPUTES.

Where a dispute concerning the business of a society arises -

(a) among members, past members and persons claiming through members, past members or deceased members; or

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- (b) between a member, past member or a person claiming through a member, past member or deceased member and the society, the Board or an officer of the society; or
- (c) between the society or the Board and an officer, director, management or staff of the society; or
- (d) between the society and another society,

it shall be referred to the Central Bank for mediation.

45. UNAUTHORISED SAVINGS AND LOAN SOCIETIES.

A person who -

- (a) forms or takes part in the formation of; or
- (b) manages or takes part in the management of; or
- (c) carries on the business of,

a society otherwise than in accordance with this Act is guilty of an offence.

46. PROHIBITION ON USE OF TITLE.

A person, other than a society, who trades or carries on business under any name or title of which the words “savings and loan” or “credit union”, or any other words importing a similar meaning, form part, is guilty of an offence.

47. DEFAULT BY SOCIETY.

A society that fails -

- (a) to keep a register, account or document, or to make any entry in a register, account or document, in accordance with the requirements of this Act; or
- (b) to have at its office and open for inspection copies of -
 - (i) this Act and the regulations; and
 - (ii) the constitution of the society; and
 - (iii) the last audited financial statements referred to in Section 43; and
 - (iv) a register, as required by this Act; or
- (c) to transmit to the Central Bank any notice or return as required by this Act,

is guilty of an offence.

48. LIABILITY OF DIRECTORS.

Where a society contravenes or fails to comply with a provision of this Act, and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the society or any person who was purporting to act in any such capacity, that person, as well as the society, shall be guilty of the offence.

49. PROTECTION FROM LIABILITY AND INDEMNITY.

(1) Subject to Subsection (2), the Central Bank, every member of the Board and every officer of the Central Bank are not subject to any liability to any person in respect of anything done or omitted to be done, in the exercise or performance, or the purported exercise or performance of powers, functions or duties conferred or imposed on the Central Bank, the Board, a member of the Board or an officer by or under this Act.

- (2) Subsection (1) does not apply to an act or omission not done in good faith.

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(3) An officer and every member of the Board of the Central Bank shall be indemnified by the Central Bank in respect of any liability arising from the exercise or purported exercise of, or omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or omission to exercise, the power was not done in good faith.

(4) The indemnity conferred by Subsection (1) extends to legal costs incurred in defending a proceeding.

50. FEES PAYABLE BY SOCIETIES.

(1) A society shall, within 14 days after the date on which a license is granted, pay to the Central Bank, the license fee specified in Section 26(2) of the Regulation.

(2) Every society shall pay to the Central Bank on or before 1 January in each year, the annual license fee specified in Section 26(3) of the Regulation.

(3) Fees payable under this section are a debt due to the Central Bank and where not paid within 14 days of the due date, the Central Bank may take whatever recovery steps are considered appropriate to ensure the fees are paid.

(4) A society which fails to comply with this section is guilty of an offence under the Act.

51. LOCATION OF PLACES OF BUSINESS.

Unless specified in its license, a society which -

- (a) opens a new place of business; or
- (b) changes a location of a place of business; or
- (c) closes a place of business,

without the prior approval of the Central Bank is guilty of an offence.

52. SUBSIDIARIES OF SOCIETIES.

(1) A society which registers or incorporates a subsidiary without the prior approval of the Central Bank is guilty of an offence.

(2) The regulations shall prescribe the manner in which societies shall manage the activities of their subsidiaries.

53. BUSINESS DAYS AND NON-BUSINESS DAYS.

(1) Societies shall be open for transaction of business on such days, and during such hours, as the Central Bank determines.

- (2) Where, in the opinion of the Central Bank, it is in the public interest that -
- (a) societies; or
 - (b) a particular society; or
 - (c) a particular branch of a society,

should remain closed on a day that is not a public holiday, the Central Bank may, by notice in the National Gazette, declare that day to be a non-business day for societies, or for a particular society, or for a particular branch, as the case may be, and every society, or a particular society, or a particular branch, as the case may be, shall remain closed on that day.

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(3) A society is not compelled to make a payment or to do any other act on a day that is a non-business day in relation to it by virtue of Subsection (2), or at a branch on a day that is a non-business day in relation to the branch by virtue of that subsection, and any obligation to make a payment or do an act on such a day shall be deemed to be an obligation to make the payment or do the act on the next day that is not a public holiday or such a day.

54. REGULATIONS.

The Head of State, acting on the advice of the Central Bank, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing -

- (a) the powers and duties of the Central Bank; and
- (b) the notices to be given, returns and reports to be made and records to be kept under this Act, and the form of such notices, returns, reports and records; and
- (c) the fees, if any, to be paid in connection with a matter arising under this Act; and
- (d) the management of societies, including the creation and operation of subsidiaries of societies; and
- (e) the manner of doing any act or thing required by this Act to be done; and
- (f) penalties or fines not exceeding K5,000.00 for offences against the regulations.

55. OFFENCES AND PENALTIES.

(1) A person convicted of an offence against any of the sections listed in Part I of Schedule 3 is liable to a fine as listed in Part IV of Schedule 3.

(2) A person convicted of an offence against any of the sections listed in Part II of Schedule 3 is liable to a fine as listed in Part IV of Schedule 3.

(3) A person convicted of an offence against any of the Sections listed in Part III of Schedule 3, is liable to a default penalty fine as listed in Part IV of Schedule 3, in addition to any of the fines he is liable to pay in Part I or Part II of Schedule 3.

(4) A person who contravenes any other provision of this Act is liable to a fine as listed in Part IV of Schedule 3.

(5) Where a person does or fails to do an act in circumstances that give rise to the person committing an offence against this Act, the person is guilty of an offence against this Act in respect of -

- (a) the first day on which the offence is committed; and
- (b) each subsequent day, (if any), on which the circumstances that gave rise to the person committing the offence continue (including the day of conviction for any such offence or any later day).

56. POWER TO ADOPT OTHER SANCTIONS.

In addition to powers recognised under Sections 6, 22, 23, 24, 37 and 55, the Central Bank shall specify sanctions of an administrative nature to be imposed on a society if it does not comply with this Act, the conditions of license, prudential standards and directions set by the Central Bank.

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PART X. - REPEAL, AMENDMENT, SAVING AND TRANSITIONAL PROVISIONS.

Division 1. - General.

57. REPEALS.

On the coming into operation of this Act, the *Savings and Loan Societies Act* (Chapter 141) and the *Savings and Loan Societies Regulation* (Chapter 141A) are repealed.

58. TRANSITIONAL PROVISIONS FOR ASSOCIATIONS.

(1) In this section, “Association” means an association registered and incorporated under Section 35(2) of the former Act but does not include a Federation.

(2) All Associations shall cease to carry on business except for the purposes of this section.

(3) The Central Bank may appoint a competent person to be the liquidator of an Association and the provisions of Section 1(2), (3) and (4), Section 2(2), Section 3 and Section 5 of Schedule 2 shall apply, mutatis mutandis, to a liquidator so appointed.

(4) As soon as practicable, after completion of the liquidation of an Association, the Central Bank shall -

- (a) cancel the registration of the Association, with the result that it is dissolved and ceases to exist; and
- (b) cause to be published in the National Gazette notice of the cancellation of the registration and dissolution of the Association.

59. TRANSITIONAL PROVISIONS FOR EXISTING SOCIETIES.

The provisions of the former Act and of any of the Rules and Regulations made under that Act shall continue to apply to an existing society as if that Act and those Rules and Regulations had not been repealed until either -

- (a) the existing society has incorporated as a company under the *Companies Act 1997* and applies to the Central Bank for a license to carry on business as a savings and loan society under this Act; or
 - (b) the first anniversary of the date of coming into operation of the Act,
- whichever happens first.

60. DEEMED CANCELLATION OF REGISTRATON OF EXISTING SOCIETIES.

(1) Upon -

- (a) incorporation of an existing society under the *Companies Act 1997* and issue of a license under this Act; or
- (b) the first anniversary of the date of coming into operation of this Act,

whichever first occurs, an existing society shall cease to carry on business except for the purposes of this section.

(2) Where the existing society has -

- (a) incorporated a body corporate under the *Companies Act 1997*; and
- (b) obtained a license under this Act,

then, upon the date of grant of the license -

- (c) all assets and liabilities of the existing society shall, by virtue of this section, be transferred from the existing society to the body corporate; and

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(d) the Central Bank shall cancel the registration of the existing society with the result that the existing society is dissolved and ceases to exist.

(3) Where an existing society has not -

- (a) incorporated a body corporate under the *Companies Act 1997*; and
- (b) obtained a licence under this Act within the period specified in Subsection (1)(b),

the Central Bank shall order the winding up of the existing society on the terms and conditions set out in Schedule 2 or modified by any regulations made under Section 54.

(4) As soon as practicable after the winding up of an existing society under Subsection (3), the Central Bank shall -

- (a) cancel the registration of the existing society, with the result that it is dissolved and ceases to exist; and
- (b) cause to be published in the National Gazette, notice of the dissolution and of the cancellation of the registration of the existing society.

61. TRANSITIONAL PROVISIONS APPLYING TO WINDING UP OF SOCIETIES.

(1) Nothing in this Act or the *Companies Act 1997* applies to or affects any application, resolution, order, winding up, or dissolution made by the Central Bank for the winding up of an existing society and the provisions of Part VI of the former Act shall continue to apply in respect of any such application, resolution, order, winding up, dissolution or other consequence resulting from it as if the former Act had not been repealed.

(2) Section 58 of the former Act shall continue in force in respect of -

- (a) the dissolution of an existing society in any case where the Central Bank received a certificate under Section 57 of the former Act and a statement and balance sheet prepared by a liquidator under Section 56 of the former Act, before that existing society applied for a license under this Act; and
- (b) any society, whose registration was cancelled before that society applied for a license under this Act,

as if the former Act had not been repealed.

62. PROCEEDINGS UNDER FORMER ACT.

All applications, actions, appeals, proceedings and other matters under the former Act which have been commenced in relation to an existing society before that society was licensed as a society under this Act shall be heard and determined as if the former Act had not been repealed.

63. EXISTING CAUSES OF ACTION.

(1) Subject to the *Frauds and Limitation Act 1988*, the repeal of the former Act shall not extinguish any existing cause of action.

(2) Where -

- (a) a cause of action arose under any of the provisions of the former Act in relation to an existing society before that society was licensed as a society under this Act; and
- (b) no proceedings have been initiated in respect of that cause of action at the date that society was licensed under this Act,

the former Act shall continue to apply to any proceedings commenced in respect of that cause of action as if it had not been repealed.

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64. REFERENCES TO FORMER ACT, ETC.

A reference in any law or in any instrument made under or in relation to the former Act or a provision of the former Act shall, on and after the coming into operation of this Act, unless the context otherwise requires, be read and construed as a reference to this Act or to the corresponding provision of this Act.

65. FURTHER TRANSITIONAL PROVISIONS.

Regulations made under this Act may supplement or modify the transitional provisions set out in this Part.

Division 2. - The Federation.

66. TRANSITIONAL PROVISIONS FOR FEDERATION.

In this section -

“Federation” means the Papua New Guinea Federation of Savings and Loan Societies incorporated under the *Associations Incorporation Act* (Chapter 142);

“former Federation” means the body corporate established under the *Savings and Loan Societies Act* (Chapter 141) and authorised under Section 37 of the former Act, to take the title of the Federation of Savings and Loan Societies Limited.

67. FEDERATION OF SAVINGS AND LOAN SOCIETIES.

(1) The members of the former Federation shall apply to incorporate an association with the name, “Federation of Savings and Loan Societies”, under the *Associations Incorporation Act* (Chapter 142).

(2) Upon -

(a) incorporation of the Federation under the *Associations Incorporation Act* (Chapter 142); or

(b) the first anniversary of the date of coming into operation of this Act,

whichever first occurs, the former Federation shall cease to carry on business except for the purposes of this Part.

(3) Where the members of the former Federation have not incorporated an association under the *Associations Incorporation Act* (Chapter 142) within the period specified in Subsection (2)(b), the Central Bank shall order the winding up of the former Federation on the terms and conditions set out in Schedule 2 or modified by any Regulations made under Section 54.

68. DIRECTORS, CHIEF EXECUTIVES AND MANAGERS OF FEDERATION TO BE FIT AND PROPER.

Section 9, with the necessary modifications, shall apply to and in relation to the Federation.

69. FUNCTIONS OF THE FEDERATION.

The Federation shall -

(a) assist in the development of societies generally or in a particular area; and

(b) conduct activities on behalf of its members that may contribute to their common benefit; and

(c) promote interest and co-operation between societies and similar organisations, whether within or outside the country; and

(d) further the common interests of its members for the benefit of them or their members; and

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- (e) develop policies to promote the activities of societies; and
- (f) provide the necessary training for societies; and
- (g) provide assistance to its members in distress.

70. POWERS OF THE FEDERATION.

(1) For the purpose of carrying out its functions in accordance with this Act, the Federation may, subject to this Act and any prudential standards -

- (a) deposit money in an authorised institution; and
- (b) raise money on loan, subject to the approval of the Central Bank, for the objects of the Federation and mortgage or pledge its property as security for the loan; and
- (c) invest funds in securities of or guaranteed by the State or in other prescribed securities; and
- (d) invest funds in any institution, subject to the approval of the Central Bank; and
- (e) insure its loans, funds or property against loss; and
- (f) hold, buy, lease, sell, surrender, exchange, mortgage or otherwise deal in property; and
- (g) do all other acts and things that are incidental or conducive to, or consequential on, the attainment of its objects.

(2) In addition to the powers conferred on it by Subsection (1), the Federation -

- (a) has the power to perform internal audits of the accounts and records of financial transactions of its members and any records relating to the society's assets or assets in its custody, in accordance with any relevant prudential standards; and
- (b) has the power, with the approval of the Central Bank, to conduct a scheme for the protection of the funds of its member societies.

71. MEMBERSHIP.

All societies shall, in the prescribed manner, become a member of the Federation.

72. RULES OF THE FEDERATION.

(1) The Federation shall not, without the consent, in writing, of the Central Bank, adopt rules or alter those rules.

(2) Notwithstanding Sections 15 and 16 of the *Associations Incorporation Act* (Chapter 142), Schedule 4 shall be read and construed as part of the rules of the Federation.

73. CERTAIN PARTS TO APPLY.

The following parts of this Act shall, with the necessary modifications, apply to and in relation to the Federation -

- (a) prudential standards under Part IV; and
- (b) information and Investigation under Part V.

74. FORMER OFFICERS AND STAFF OF FEDERATION.

(1) A person who, immediately before the coming into operation of this Act, was an employee of the Federation, shall be deemed, on the coming into operation of this Act, to continue as an employee of the Federation -

- (a) on the same terms and conditions; and
- (b) with all entitlements which had accrued to that person prior to the repeal of the former Act.

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(2) The board of the Federation under the former Act shall continue as the board of the Federation under this Act until such time as a new board is selected in accordance with the provisions of this Act and the *Associations Incorporation Act* (Chapter 141).

(3) Where a person held office on the board of the former Federation, that period of service shall be included in calculating whether that person is eligible for re-election under this Act.

75. TRANSFER OF ASSETS, ETC., TO FEDERATION.

All the assets, property, right, obligations and liabilities which, immediately before the coming into operation of this Act, were vested in or imposed on the former Federation shall, on the coming into operation of this Act, be deemed to have been transferred to and become the assets, property, rights, obligations and liabilities of the Federation.

76. SAVING OF CONTRACTS.

All contracts, agreements, conveyance, deeds, leases, licenses and other instruments and undertakings entered into by, made with, or addressed to, the former Federation, whether alone or with any other person, before, and in effect immediately before, the commencement date, are, on that date, to the extent that they were previously binding on and enforceable against the former Federation, binding and of full force and effect in every respect against or in favour of the Federation as fully and effectually as if, instead of the former Federation, the Federation had been a party to them or bound by them or entitled to the benefit of them.

77. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding, or any cause of action, arbitration or proceeding, was pending or existing by, against or in favour of the former Federation, it does not, on the coming into operation of this Act, abate or discontinue or be in any way affected by any provision of this Act, but may be prosecuted, continued and enforced by, against or in favour of the Federation when it might have been enforced by, against or in favour of the former Federation as if this Act has not been made.

78. APPLICATION OF ACTS, ETC.

Where -

(a) any Act or subordinate enactment other than this Act; or

(b) any document or instrument whenever made or executed,

contains a reference express or implied to the former Federation, that reference shall, after the coming into operation of this Act and except where the context otherwise requires, be read and construed and has effect as a reference to the Federation.

79. EVIDENCE OF VESTING.

(1) Where any property transferred to the Federation by Section 75 is land registered under the *Land Registration Act* (Chapter 191), the Registrar of Titles shall, without formal transfer, on application in that behalf by the Federation, enter or register the Federation in the register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp or other duty, tax or fee is payable on a registration made under Subsection (1).

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(3) Where any property transferred to the Federation consists of shares in a company or other marketable securities, the company secretary or other responsible officer of the company shall, without formal transfer on the application in that behalf by the Federation, enter or register the Federation in the register of members or security holders and upon the share certificate or other instrument evidencing title to the securities.

(4) No stamp or other duty, tax or fee is payable on a registration or transfer made under Subsection (3).

(5) The production of a copy of this Act, certified by the First Legislative Counsel, as a true copy shall be conclusive evidence of the vesting in the Federation of an asset, property and liability of the former Federation, in accordance with this Act.

- (6) The vesting of an interest in land by or under this Part shall not -
- (a) constitute a purchase, creation, assignment, transfer, devolution, alienation, parting with possession, dealing with or other disposition of that interest for the purposes of any bill or instrument concerning that interest; or
 - (b) give rise to any forfeiture or invalidate or discharge any contract or security or operate so as to merge any leasehold interest in the reversion expectant on it.

SCHEDULE 1.

CRITERIA FOR AUTHORISATION.

Section 9.

DIRECTORS, CHIEF EXECUTIVES AND MANAGERS MUST BE FIT AND PROPER PERSONS.

(1) Every person who is, or is to be, a director, chief executive or manager of a society must be a fit and proper person to hold the particular position.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to -

- (a) his probity; and
- (b) his competence and soundness of judgment for fulfilling the responsibilities of that position; and
- (c) the diligence with which he is fulfilling or likely to fulfil those responsibilities; and
- (d) whether the interests of members of the society or proposed society are, or are likely to be, in any way threatened by his holding that position.

(3) Without limiting the generality of the foregoing provisions, regard may be had to the previous conduct and activities, in business or financial matters, of the person in question and, in particular, to any evidence that he has -

- (a) committed an offence involving fraud or other dishonesty or violence; or
- (b) been engaged in or been associated with any financial loss due to dishonesty, incompetence or malpractice in the provision of savings and loan services, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts; or

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- (c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting savings and loan businesses, investments and other financial services; or
- (d) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment; or
- (e) previously been engaged as a director, chief executive or manager of a society or Authorised Institution under the *Bank and Financial Institutions Act 2000*, that has been declared bankrupt or placed under statutory management by the Central Bank.

SCHEDULE 2.

PROVISIONS APPLYING TO EXISTING SOCIETIES WHOSE REGISTRATION IS DEEMED TO BE CANCELLED.

Section 60.

DEEMED CANCELLATION OF REGISTRATION OF EXISTING SOCIETY.

1. LIQUIDATOR.

(1) In the notice ordering the winding up of an existing society or in a subsequent notice, the Central Bank may appoint a competent person to be the liquidator of the society.

- (2) A liquidator appointed under Subsection (1) -
 - (a) has such powers, functions and duties; and
 - (b) shall give such security; and
 - (c) shall be paid such fees,

as are prescribed.

(3) The Central Bank may require a liquidator to furnish to it progressive reports on the winding up of the existing society.

(4) Where the Central Bank is unable to appoint a liquidator under Subsection (1), the Central Bank may proceed with the winding up of the existing society under Section 2.

2. COMMENCEMENT OF WINDING UP.

(1) For the purposes of this Act, the winding up of an existing society commences on the date of publication, in the National Gazette, of the order by the Central Bank for the winding up.

(2) The Central Bank may determine the period of winding up of an existing society, but such period shall not exceed three years.

3. LIABILITY OF PAST AND PRESENT MEMBERS ON WINDING UP.

(1) Where an existing society is being wound up under the former Act, every past and present member is, subject to this section, liable to contribute to the assets of the existing society an amount sufficient for the payment of -

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- (a) the debts and liabilities of the existing society; and
- (b) the costs, charges and expenses of the winding up; and
- (c) any sums required for the adjustment of the rights of the contributories among themselves.

(2) Notwithstanding Subsection (1), the liability of every past and present member is limited to the value of that members' membership fees that remain unpaid at the commencement of the winding up.

(3) A past member is not liable to contribute to the assets of the society if he had ceased to be a member for one year or more before the commencement of the winding up.

(4) A past member is not liable to contribute to the assets of the existing society in respect of any of its debts or liabilities that were contracted after he ceased to be a member.

(5) A past member is not liable to contribute to the assets of the existing society unless it appears to the liquidator that the existing member is unable to make the contributions required to be made by him in order to satisfy all just demands on the existing society.

(6) A sum due to a member as such, by way of interest, profits or otherwise, shall not be deemed to be a debt of the existing society payable to the member in the case of competition between him and any other creditor who is not a member, but any such sum may be taken into account for the purpose of the final adjustment of the rights of contributors among themselves.

(7) This section does not affect any right of the liquidator or the existing society to the recovery of any debt due to the existing society by any person.

4. SOCIETY TAKING OVER LIABILITIES, ETC., OF EXISTING SOCIETY IN LIQUIDATION.

With the approval of the Central Bank, and subject to such conditions as the Central Bank imposes, a society may accept the transfer, by the liquidator of an existing society, of all or any of the assets and liabilities of the existing society.

5. RETURN BY LIQUIDATOR.

The liquidator of an existing society must, within one month after the affairs of the existing society have been fully wound up, send to the Central Bank an account and balance sheet -

- (a) signed and certified by the liquidator as correct; and
- (b) showing -
 - (i) the assets and liabilities of the existing society at the commencement of the winding up; and
 - (ii) the mode in which the assets and liabilities have been applied and discharged.

6. DISSOLUTION.

An existing society is not dissolved until -

- (a) a certificate, that all property vested in the society has been duly transferred by the society to the persons entitled to it; and
- (b) the statement and balance sheet referred to in Section 5, have been received by the Central Bank.

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7. CANCELLATION OF REGISTRATION.

As soon as practicable after the dissolution of an existing society, the Central Bank shall -

- (a) register the dissolution; and
- (b) cancel the registration of the existing society; and
- (c) cause to be published in the National Gazette notice of the dissolution and of the cancellation of the registration of the existing society.

SCHEDULE 3.

PENALTIES FOR OFFENCES AGAINST THIS ACT.

Section 55.

PART I. - SECTIONS WHICH CARRY A FINE NOT EXCEEDING K5,000.00.

- Section 11. - Conditions on License.
- Section 19. - Alteration of records.
- Section 20. - Returns to be submitted by societies.
- Section 21. - Investigations on behalf of the Central Bank.
- Section 23. - Bank's Power of investigation.
- Section 24 – Protection of persons supplying information to the Central Bank.
- Section 25. - Powers of direction.
- Section 28. - Powers and functions of a statutory manager.
- Section 40. - Advertisements.
- Section 42. - Secrecy.
- Section 48. - Liability of Directors.
- Section 50. - Fees payable by societies.
- Section 51. - Location of places of business.

PART II. - SECTION WHICH CARRY A FINE NOT EXCEEDING K10,000.00.

- Section 8. - Name of savings and loan society.
- Section 41. - False or misleading inducement to make a deposit.
- Section 45. - Unauthorised savings and loan societies.
- Section 46. - Prohibition on use of title.
- Section 47. - Default by society.
- Section 52. - Subsidiaries of societies.

PART III. - SECTIONS WHICH CARRY AN ADDITIONAL DEFAULT PENALTY OF K500.00 FOR EVERY DAY THAT THE OFFENCE CONTINUES.

- Section 8. - Name of savings and loan society.
- Section 45. - Unauthorised savings and loan societies.
- Section 46. - Prohibition on use of title.
- Section 47. - Default by society.
- Section 48. - Liability of directors.
- Section 50. - Fees payable by societies.
- Section 52. - Subsidiaries of societies.

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PART IV. - GENERAL PENALTY.

(1) A person who commits an offence against this Act, for which there is no specific penalty provided, is liable to a penalty of K10,000.00.

(2) Where an offence against this Act is of a continuing nature, a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in this Part, not exceeding K500.00 per day for each day after conviction that the person continues to commit the offence.

SCHEDULE 4.

BOARD OF DIRECTORS.

Section 72.

1. BOARD OF DIRECTORS.

(1) The business and operations of the Federation shall be managed and controlled by a Board of Directors or other governing authority of the Federation and in this Schedule referred to as the “Board”, and for that purpose, the Board shall have and may exercise, subject to this section, all the powers of the Federation as if they had been expressly conferred on the Board by the Federation.

(2) The exercise of the powers of the Board shall be subject to any restrictions or limitations imposed -

(a) by this Act; or

(b) by the regulations and any relevant prudential standards.

2. APPOINTMENT OF BOARD.

(1) Every three years at the annual general meeting of the Federation, the members of the Federation shall elect a Board of Directors of not less than five directors.

(2) The Board shall comprise of current directors as members of the Federation and at least one independent director.

(3) Every member of the Board shall hold office for a term of three years and is eligible for re-election for another term.

(4) Any member of the Board who has held office for two consecutive terms shall not be eligible for re-election until after the expiration of six years.

3. MEETINGS OF BOARD.

Meetings of the Board shall be held as often as the Board thinks necessary and in any case, not less often than once in each period of three months.

4. CHAIRPERSON.

(1) Subject to Subsection (2), the Board may elect a chairman who shall hold office for two consecutive terms of two years and shall retire at the end of the term.

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(2) A person who was elected as the chairman and has retired in accordance with Subsection (1), shall not be re-elected as chairman of the Board until the expiration of two consecutive terms of two years.

I hereby certify that the above is a fair print of the *Savings and Loan Societies Act 2015* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Savings and Loan Societies Act 2015* was made by the National Parliament on 4 November 2015.

Acting Speaker of the National Parliament.