

New South Wales



ANNO VICESIMO QUINTO

ELIZABETHÆ II REGINÆ

Act No. 94, 1976.

An Act to prohibit persons, other than exempted persons and companies declared under this Act to be loan fund companies, from operating loan fund schemes; and to regulate the affairs and activities of companies so declared. [Assented to, 8th December, 1976.]

BE

Loan Fund Companies.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short
title.

1. This Act may be cited as the "Loan Fund Companies Act, 1976".

Commence-
ment.

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

(2) Except as provided in subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Division
of Act.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–4.

PART II.—ADMINISTRATION—ss. 5–11.

PART III.—CONDUCT OF LOAN FUND SCHEMES—ss. 12, 13.

PART IV.—MANAGEMENT AND OPERATION OF LOAN FUND COMPANIES—ss. 14–31.

DIVISION 1.—*Power to Declare Public Companies, etc., to be Loan Fund Companies*—s. 14.

DIVISION

Loan Fund Companies.

DIVISION 2.—*Obligations, etc., of Loan Fund Companies—ss. 15–25.*

DIVISION 3.—*Provisions Relating to Funds of Loan Fund Companies—ss. 26–28.*

DIVISION 4.—*Other Provisions Relating to Operation of Loan Fund Companies—ss. 29–31.*

PART V.—RIGHTS WITH RESPECT TO SHARES AND OPTIONS TO ACQUIRE SHARES IN LOAN FUND COMPANIES—ss. 32–47.

DIVISION 1.—*Rights of Persons Acquiring Shares and Options—ss. 32–38.*

DIVISION 2.—*Rights of Shareholders and Option-holders to Attend and Vote at Meetings—s. 39.*

DIVISION 3.—*Transmission and Transfer of Shares and Options—s. 40.*

DIVISION 4.—*Forfeiture or Surrender of Shares and Options—ss. 41–47.*

PART VI.—SPECIAL POWERS WITH RESPECT TO THE SUPERVISION OF LOAN FUND COMPANIES—ss. 48–64.

DIVISION 1.—*Inspections—s. 48.*

DIVISION 2.—*Inquiries—ss. 49–56.*

DIVISION 3.—*Power to Control Prospectuses and Advertising, to Suspend Acceptances of Money and to Appoint Administrators—ss. 57–64.*

PART VII.—MISCELLANEOUS PROVISIONS—ss. 65–72.

DIVISION 1.—*Proceedings—ss. 65–68.*

DIVISION 2.—*Other Matters—ss. 69–72.*

SCHEDULES.

Loan Fund Companies.

**Interpreta-
tion.**

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“actuary” means—

- (a) a Fellow of the Institute of Actuaries incorporated by Royal Charter on 29th July, 1884;
- (b) a Fellow of the Faculty of Actuaries in Scotland; or
- (c) the holder of a prescribed qualification as an actuary,

who has practised as an actuary for a continuous period of not less than 5 years;

“advertisement” means an advertisement in any form or medium, and includes an advertisement in or in the form of a circular, poster, handbill, brochure or other document or in a newspaper, magazine or other periodical publication or in the form of a statement or announcement on radio or television or in or in the form of a gramophone or tape recording or a cinematographic or videotape film;

“Advisory Committee” means the Loan Fund Companies Advisory Committee constituted under this Act;

“banker’s books” means—

- (a) books of a banker;
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banker; and
- (c) securities or documents of title to securities in the possession or under the control of a banker whether by way of pledge or otherwise;

“Court”

Loan Fund Companies.

“Court” means the Supreme Court of New South Wales;

“Deputy Supervisor” means the Deputy Supervisor of Loan Fund Companies under this Act;

“fee”, in relation to any option to acquire loan entitlement shares in a loan fund company or to any qualifying shares, loan entitlement shares or other shares in a loan fund company, includes any brokerage or commission, or any application fee, payable in connection with the granting of that option or, as the case may be, those shares and includes any management fee or service fee payable in connection with the holding of that option or those shares;

“foreign company” means a company to which Division 3 of Part XI of the Companies Act, 1961, applies;

“inspector” means an inspector appointed, or deemed to have been appointed, under this Act;

“issue”, in relation to an advertisement, includes disseminate, circulate and distribute;

“loan entitlement shares” means shares, whether ordinary shares, redeemable preference shares or shares of any other description, which confer on the holder of the shares at the time of allotment a contingent right to receive a loan;

“loan fund company” means a company in respect of which an order made under section 14 is in force;

“loan fund scheme” means a scheme which, in substance and irrespective of its form, involves the contribution or subscription of money, directly or indirectly, by persons to a fund and confers on each of those contributors or subscribers or on each of a substantial proportion of them an entitlement to receive out of the fund at some date, whether ascertainable or not, a loan the amount of which is determined by reference to the amount of money that each contributor or subscriber has contributed or subscribed or agreed to contribute or subscribe to the fund;

“member”,

Loan Fund Companies.

“member”, in relation to a loan fund company, means a person who is the holder of shares in the company;

“officer”, in relation to a loan fund company, includes—

- (a) any director, secretary or employee of the company;
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument;
- (c) any official manager or deputy official manager of the company appointed under Part IX of the Companies Act, 1961; and
- (d) any liquidator of the company appointed in a voluntary winding up,

but does not include—

- (e) any receiver who is not also a manager;
- (f) any receiver and manager appointed by the Court;
- (g) any liquidator appointed by the Court or by the creditors; or
- (h) an administrator appointed in respect of the company under section 60;

“option nomination”, in relation to loan entitlement shares, means the right of the person who holds the option nomination, subject to the fulfilment of the terms and conditions on which the option nomination was granted, to acquire those loan entitlement shares, whether allotted or to be allotted, by virtue of an agreement between that person and another person who is the holder of an option to acquire those shares;

“option to acquire”, in relation to loan entitlement shares, means an option conferring on its holder a right, subject to the fulfilment of the terms and conditions on which it was granted, to acquire those shares;

“penalty”,

Loan Fund Companies.

“penalty”, in relation to a penalty imposed by a loan fund company, includes a fine;

“promote” includes advertise;

“prospectus” has the meaning ascribed to that expression by section 5 (1) of the Companies Act, 1961;

“public company” has the meaning ascribed to that expression by section 5 (1) of the Companies Act, 1961;

“qualifying shares” means shares, whether ordinary shares, redeemable preference shares or shares of any other description, which confer on the holder of the shares a right, subject to the fulfilment of the terms and conditions on which they were allotted, to apply for and receive an allotment of loan entitlement shares;

“recognised company” has the meaning ascribed to that expression by section 5 (1) of the Companies Act, 1961;

“records” includes books, accounts, minutes, registers, deeds, writings or documents and any other sources of information compiled, recorded or stored in written form or on microfilm, or by electronic process, or in any other manner or by any other means;

“regulations” means regulations made under this Act;

“Supervisor” means the Supervisor of Loan Fund Companies under this Act, and includes the Deputy Supervisor when performing or exercising the duties, powers and authorities of the Supervisor;

“vested

Loan Fund Companies.

“vested loan entitlement”, in relation to loan entitlement shares in a loan fund company, means a right vested in the holder of those shares to obtain from the company a loan of an amount which, having regard to the memorandum and articles of association of the company or the prospectus under which those shares were allotted, is appropriate to those shares.

(2) For the purposes of this Act—

- (a) the holder of loan entitlement shares in a loan fund company is deemed to have a vested right to receive a loan from the company when—
- (i) the company has offered him such a loan, being an offer which is attributable to the holding of those shares; and
 - (ii) he has accepted the offer and the conditions (if any) subject to which the offer was made;
- (b) a reference to an offer of a loan includes an invitation to apply for a loan; and
- (c) a reference to the acceptance of an offer of a loan includes the making of an application for a loan in response to an invitation to make such an application.

PART

Loan Fund Companies.

PART II.

ADMINISTRATION.

5. (1) There shall be a Supervisor of Loan Fund ~~Supervisor.~~
Companies and an office of the Supervisor.

(2) The Supervisor shall be appointed by the Governor subject to and in accordance with the Public Service Act, 1902, and, until that appointment is made, the Registrar of Co-operative Societies shall be the Supervisor and the office of the Registrar of Co-operative Societies shall be the office of the Supervisor.

(3) All documents lodged by a loan fund company under this Act with the Supervisor shall be kept in the office of the Supervisor.

(4) The Supervisor shall have an official seal and shall have such duties, powers and authorities as are prescribed.

6. (1) The duties, powers and authorities of the Super-~~Supervisor~~ ^{Deputy Supervisor.} may be performed and exercised by a person appointed by the Governor as Deputy Supervisor of Loan Fund Companies and, until that appointment is made, the deputy registrar appointed under section 115 (6) of the Co-operation Act, 1923, shall be the Deputy Supervisor.

(2) The Deputy Supervisor shall exercise his office subject to such conditions and restrictions, if any, as the Supervisor may impose—

- (a) generally;
- (b) in relation to any specified matter or class of matters; or
- (c) in relation to all matters other than any specified matter or class of matters.

(3)

Loan Fund Companies.

(3) No person shall be concerned to see or inquire whether, in the case of any dealing or transaction with the Deputy Supervisor, any condition or restriction has been imposed on the exercise of the powers of the Deputy Supervisor or to inquire as to his authority.

(4) All acts or things done or omitted by the Deputy Supervisor in the administration of this Act shall be as valid and effectual, and shall have the same consequences, as if the acts or things had been done or omitted by the Supervisor.

Inspectors. 7. (1) The Minister may appoint inspectors for the purposes of this Act.

(2) A person appointed as an inspector under section 118A of the Co-operation Act, 1923, is deemed by virtue of that appointment to be an inspector appointed under subsection (1).

(3) An inspector shall be provided by the Supervisor with a certificate of his authority as an inspector.

(4) An inspector, on exercising in any place a power conferred on him by or under this Act, shall, if so requested by a person apparently in charge of that place or of any work being performed there, produce the certificate of his authority as an inspector.

(5) Notwithstanding any other provision of this Act, neither the Supervisor nor an inspector has authority under this Act to enter a dwelling-house or other residential premises without the consent of the occupier thereof unless the business of a loan fund company or an activity connected with the operation, management, control or promotion of a loan fund scheme is carried on in that house or in those premises, as the case may be.

Loan Fund Companies.

8. (1) The Supervisor may, by instrument in writing, ^{Delegation.} delegate such of his duties, powers (other than this power of delegation) and authorities as may be specified in the instrument of delegation to any officer or employee employed in his office and may, by a similar instrument, revoke any such delegation either wholly or in part.

(2) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the performance or exercise of any of the duties, powers or authorities that have been delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(3) A duty, power or authority, the performance or exercise of which has been delegated under subsection (1) may, while the delegation remains unrevoked, be performed or exercised by the delegate from time to time in accordance with the terms of the delegation.

(4) Notwithstanding the making of any delegation under subsection (1), the Supervisor may continue to perform or exercise all or any of the duties, powers or authorities that have been delegated.

(5) Any act, omission or thing done, omitted or undergone by a delegate while acting pursuant to a delegation made under subsection (1) shall have the same force and effect as if the act, omission or thing had been done, omitted or undergone by the Supervisor.

9. (1) There shall be established a committee, to be known as the Loan Fund Companies Advisory Committee, for the purpose of performing the functions referred to in section 11.

Establish-
ment of
Loan
Fund
Companies
Advisory
Committee.

Loan Fund Companies.

(2) The Advisory Committee shall consist of such number of members as may be determined by the Minister, being not less than 5 nor more than 9 or, where some other maximum number is prescribed, not more than the prescribed maximum number.

(3) One of the members of the Advisory Committee shall be the person who for the time being holds the office of Supervisor and, by virtue of holding that office, he shall be the chairman and executive member of the Committee.

(4) At least one of the members of the Advisory Committee shall be an officer of a loan fund company.

(5) A member of the Advisory Committee, other than the chairman—

(a) shall—

(i) be appointed by the Minister for such period as the Minister thinks fit; and

(ii) hold and vacate office in accordance with the terms of his appointment or re-appointment;

(b) may be removed from office by the Minister by notice in writing addressed and delivered to that member; and

(c) may at any time resign his office by notice in writing addressed to the Minister.

(6) The chairman of the Advisory Committee shall be deemed to have vacated his office as such and as the executive member of the Committee if he ceases to hold office as Supervisor.

(7) On the expiration of any period of appointment or re-appointment, a member of the Advisory Committee may be re-appointed for a further period.

(8)

Loan Fund Companies.

(8) If the chairman of the Advisory Committee is unable for any reason to carry out his duties as chairman for any period, the person holding office as Deputy Supervisor shall have and may perform and exercise the duties and powers of chairman during that period and, if he is not a member of the Committee, shall be deemed to be a member of the Committee.

(9) If any member of the Advisory Committee other than the chairman is unable for any reason to carry out his duties as a member of the Committee for any period, the Minister may appoint a person who, in his opinion, is suitably qualified to act in the place of that member for that period, and that person shall, during that period, be deemed to be a member of the Committee.

(10) Each member of the Advisory Committee, unless he is an officer of the Public Service or a member of the Legislative Council or Legislative Assembly, is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister determines in respect of him.

10. (1) Meetings of the Advisory Committee may be convened by the chairman or by any 2 members of the Committee. ^{Meetings of} ^{Advisory} ^{Committee.}

(2) At any meeting of the Advisory Committee—

(a) a majority of the members of the Committee shall form a quorum; and

(b) the decision of a majority of the members of the Committee present and voting shall be the decision of the Committee.

(3)

Loan Fund Companies.

(3) Subject to this section, the Advisory Committee may conduct its business in such manner as it thinks fit.

Functions of the Advisory Committee. **11.** The Advisory Committee shall have the following functions :—

- (a) the submission to the Minister of recommendations relating to the operation of loan fund companies with a view to safeguarding the interests of members of the public who are or who may become members of such companies or who are or who may become holders of options to acquire loan entitlement shares in such companies;
- (b) the making of reports to the Minister on such matters relating to loan fund companies or the operation of loan fund schemes as he may from time to time refer to the Committee;
- (c) the provision of advice to the Supervisor on such matters relating to loan fund companies or the operation of loan fund schemes as he may from time to time refer to the Committee; and
- (d) any other function imposed on the Committee by the regulations.

PART III.

CONDUCT OF LOAN FUND SCHEMES.

Operation, etc., of loan fund schemes prohibited except by certain persons.

12. (1) After the expiration of 3 months from the commencement of this section, a person shall not operate, or manage, control or promote the operation of, a loan fund scheme, or invite, either by the issue of advertisements or other means of communication, persons to contribute or

subscribe

Loan Fund Companies.

subscribe to or participate in, whether by the allotment of shares or the granting of options to acquire shares or otherwise, a loan fund scheme, unless that person is—

- (a) a loan fund company; or
- (b) a person for the time being declared by the Minister by order published in the Gazette to be a person exempt from the application of this subsection or a person belonging to a class of persons so declared.

Penalty : \$2,000 and, in the case of a continuing offence, a further penalty of \$200 for each day during which the offence continues.

(2) The Minister may, by order published in the Gazette, declare any person or class of persons to be exempt from the application of subsection (1).

(3) A person does not contravene subsection (1) by reason of doing any act referred to in that subsection if, at the time of doing that act, he is acting in the capacity of officer or employee of a person mentioned in subsection (1) (a) or (b).

13. A person other than a person mentioned in section 12 (1) (a) or (b) shall not—

**Restrictions
on use of
certain
descriptions.**

- (a) in the name, title or description under which that person is carrying on business, take or use or by reference adopt any words indicating or implying that that person is operating a loan fund scheme; or

(b)

Loan Fund Companies.

- (b) take or use, or have attached to or exhibited at any place, a name, title or description implying or tending to lead to the belief that that person is operating a loan fund scheme.

Penalty : \$1,000 and, in the case of a continuing offence, a further penalty of \$100 for each day during which the offence continues.

PART IV.

MANAGEMENT AND OPERATION OF LOAN FUND COMPANIES.

DIVISION 1.—*Power to Declare Public Companies, etc., to be Loan Fund Companies.*

Power of Minister to declare public company, etc., to be a loan fund company subject to this Act.

14. (1) The Minister may, by order published in the Gazette, declare to be a loan fund company subject to the provisions of this Act—

- (a) any public company having a share capital; or
- (b) any recognised company or foreign company having a share capital which would, if it were incorporated in New South Wales, be a public company,

if that public company, recognised company or foreign company is operating or promoting the operation of, or proposes to operate or promote the operation of, a loan fund scheme.

(2) Every order made under subsection (1) shall take effect from the date of its publication in the Gazette or from such later date as may be specified in the order.

(3)

Loan Fund Companies.

(3) Where—

- (a) a loan fund company, being a company incorporated under the Companies Act, 1961, has been wound up under Part X of that Act or the name of that company is struck off the register of companies pursuant to section 308 of that Act;

- (b) a loan fund company, being a recognised company—
 - (i) lodges with the Corporate Affairs Commission a notice under section 343G (1) of the Companies Act, 1961, to the effect that it has ceased to have a place of business or to carry on business in New South Wales;
or
 - (ii) is dissolved in the State where it is incorporated; or

- (c) a loan fund company, being a foreign company—
 - (i) lodges with the Corporate Affairs Commission a notice under section 352 (1) of the Companies Act, 1961, to the effect that it has ceased to have a place of business or to carry on business in New South Wales;
 - (ii) is dissolved in the place where it is incorporated; or
 - (iii) has its name removed from or struck off the register of foreign companies pursuant to section 352 (5) or (6) of that Act,

the order made under subsection (1) with respect to that company shall thereupon be deemed to be revoked.

DIVISION

Loan Fund Companies.

DIVISION 2.—*Obligations, etc., of Loan Fund Companies.*

Certain persons prohibited from managing, etc., affairs or activities of loan fund company.

15. (1) Subject to this section, a loan fund company shall not enter into any contract, agreement, arrangement or understanding with a person by virtue of which the affairs and activities, or any of the affairs or activities, of the company are managed, controlled or promoted by a corporation or by a person who is not employed by the company as an officer under a contract of service.

(2) Any contract, agreement, arrangement or understanding entered into in contravention of subsection (1) shall be void.

(3) Subject to this section, where at the time at which a company becomes a loan fund company any contract, agreement, arrangement or understanding exists between the company and another person which would, if the contract, agreement, arrangement or understanding had been entered into after that date, have been entered into in contravention of subsection (1), that contract, agreement, arrangement or understanding shall, notwithstanding any of its provisions to the contrary, be deemed to be terminated from that time.

(4) Where after a company becomes a loan fund company the affairs and activities, or any of the affairs or activities, of the company are managed, controlled or promoted by a corporation or by a person who is not employed by the company as an officer under a contract of service, the company and that corporation or person are each guilty of an offence and are each liable on conviction to a penalty not exceeding \$1,000, and, in the case of a continuing offence, to a further penalty not exceeding \$100 for each day during which the offence continues.

(5) An offence against subsection (4) is not committed by reason only that a corporation or a person not employed by a loan fund company as an officer under a contract of service undertakes or performs any activity on

behalf

Loan Fund Companies.

behalf of the company in the capacity of banker, accountant, auditor, legal adviser, actuary, underwriter or advertising agent or in any other prescribed capacity.

(6) Where under any contract, agreement, arrangement or understanding referred to in subsection (3) any money has become due and payable by or to a loan fund company before the contract, agreement, arrangement or understanding is deemed to have been terminated by that subsection, that money may, to the extent that it might have been recoverable apart from that termination, be recovered in proceedings brought in a court of competent jurisdiction.

(7) Where, immediately before a company becomes a loan fund company there is in existence any contract, agreement, arrangement or understanding between the company and a person whereby the affairs and activities, or any of the affairs or activities, of the company are managed, controlled or promoted by that person and, by virtue of that contract, agreement, arrangement or understanding, that person is holding loan entitlement shares in the company or options over loan entitlement shares in the company, whether allotted or to be allotted, and has granted to any other person an option to acquire any of those loan entitlement shares or, as the case may be, an option nomination in respect of that option, the following provisions shall, on the contract, agreement, arrangement or understanding being deemed to have been terminated, apply with respect to the option or option nomination so granted—

- (a) the option or option nomination, as the case may be, shall be deemed to have been granted by the company on the date on which it was granted by the first mentioned person and shall be exercisable against the company subject to and in accordance with the same terms and conditions as those subject to and in accordance with which the option or option nomination was granted by, and would, but for this subsection, be exercisable against, that first mentioned person; and

(b)

Loan Fund Companies.

- (b) the company shall be deemed to be subrogated to all the rights and remedies of that first mentioned person in his capacity as grantor of the option or option nomination;
- (c) in the case of an option to acquire loan entitlement shares held by that first mentioned person, those shares shall be disposable only by or at the direction of the company; and
- (d) in the case of an option nomination, the option nomination shall be deemed for the purposes of this Act to be an option to acquire the loan entitlement shares to which the option nomination relates.

(8) Where any contract, agreement, arrangement or understanding between a loan fund company and a person is deemed to be terminated by virtue of subsection (3), all records held by that person which relate to any of the affairs or activities of the company and of the holder of any option to acquire loan entitlement shares in the company or of any option nomination in respect of any such option shall be deemed to belong to the company, and that person shall, within 14 days after that termination, take all practicable steps necessary to transfer those records to the control of the company.

Penalty : \$1,000.

(9) A person required to transfer any record to a loan fund company in accordance with subsection (8) shall not—

- (a) conceal, destroy, mutilate or alter any such record;
or
- (b) send, attempt to send or conspire with another person to send such a record out of New South Wales.

Penalty :

Loan Fund Companies.

Penalty : \$2,000 or imprisonment for a term of 6 months.

(10) It is a defence to a prosecution under subsection (9) to prove that the person charged did not act with intent to defeat the purposes of this section.

16. Subject to sections 17 and 19, a loan fund company shall not—

Loan fund company not to discriminate against or in favour of persons.

- (a) discriminate against or in favour of a person—
 - (i) by granting to him an option to acquire loan entitlement shares in the company;
 - (ii) by allotting to him qualifying shares in the company; or
 - (iii) by allotting to him loan entitlement shares in the company,

on terms and conditions that are less favourable or, as the case may be, more favourable than those on which the company grants any such options, or allots any such qualifying shares or loan entitlement shares, to other persons; or

- (b) in making or offering a loan to the holder of loan entitlement shares in the company—
 - (i) discriminate against him by making or offering the loan on terms and conditions less favourable; or
 - (ii) discriminate in his favour by making or offering the loan on terms and conditions more favourable,

than those on which loans are made or offered to other holders of loan entitlement shares in the company.

Penalty : \$1,000.

17. (1) A loan fund company shall—

Allocation of loan priority numbers.

- (a) on granting an option to acquire loan entitlement shares in the company;

(b)

Loan Fund Companies.

(b) on allotting qualifying shares in the company; or

(c) on allotting loan entitlement shares in the company without there having previously been granted any such option, or there having previously been allotted any such qualifying shares, with respect to those loan entitlement shares,

allocate in respect of that option or those qualifying shares or loan entitlement shares, as the case may be, a loan priority number in accordance with subsection (3).

(2) Where immediately after the time at which a company becomes a loan fund company there is or are in existence—

(a) any option to acquire loan entitlement shares in the company;

(b) any qualifying shares in the company; or

(c) any loan entitlement shares in the company with respect to which the company has not made an offer of a loan,

not later than 14 days after the date on which the company becomes a loan fund company, the company shall, except as provided in subsection (6), allocate in respect of that option or those qualifying shares or loan entitlement shares, as the case may be, a loan priority number in accordance with subsection (3).

(3)

Loan Fund Companies.

(3) All loan priority numbers allocated by a loan fund company under subsections (1) and (2) shall, whether they are allocated in respect of options to acquire loan entitlement shares or qualifying shares or loan entitlement shares, be consecutive cardinal numbers commencing with the number "1" and each such number—

- (a) shall be allocated successively in chronological order by reference—
 - (i) in the case of an option referred to in subsection (1) (a) or (2) (a), to the time at which the application for the granting of that option was made;
 - (ii) in the case of qualifying shares referred to in subsection (1) (b) or (2) (b) or loan entitlement shares referred to in subsection (1) (c), to the time at which the application for the allotment of those shares was made; or
 - (iii) in the case of loan entitlement shares referred to in subsection (2) (c), to the time at which the application for the allotment of those shares was made or, if those shares were acquired pursuant to the exercise of a right conferred by an option granted by the company or by a person referred to in subsection (2) (a) or pursuant to the exercise of a right conferred by qualifying shares in the company, to the time at which the application for the granting of that option or for the allotment of those qualifying shares was made; and
 - (b) shall, subject to this Act and to the terms and conditions of the memorandum and articles of association of the company and, in the case of a loan priority number allocated or deemed to be allocated in respect of any such option or qualifying
- shares,

Loan Fund Companies.

shares, subject to the acquisition of the relevant loan entitlement shares pursuant to the right conferred by that option or those qualifying shares, determine the order of priority in which the company is required to offer loans to holders of loan entitlement shares in the company.

(4) Where a person acquires loan entitlement shares in a loan fund company pursuant to the exercise of an option granted, or deemed to have been granted, by the company or pursuant to the exercise of a right conferred by qualifying shares in the company, the loan priority number allocated in respect of that option or, as the case may be, those qualifying shares shall be deemed to have been allocated in respect of the loan entitlement shares so acquired.

(5) Where—

- (a) the holder of an option to acquire loan entitlement shares in a loan fund company is subsequently granted a further option by the company to acquire any such shares;
- (b) the holder of qualifying shares in a loan fund company is subsequently allotted further qualifying shares in the company; or
- (c) the holder of loan entitlement shares in a loan fund company is subsequently allotted further loan entitlement shares in the company,

the company shall not—

- (d) allocate in respect of that further option, or those further qualifying shares or loan entitlement shares, the same loan priority number as that allocated in respect of the option, qualifying shares or loan entitlement shares, as the case may be, already held by him; or

(e)

Loan Fund Companies.

- (e) tack that further option or those further qualifying shares or loan entitlement shares to the option, qualifying shares or loan entitlement shares, as the case may be, already held by him so that that further option has or those further qualifying shares or loan entitlement shares have the same loan priority number as that allocated in respect of the option, qualifying shares or loan entitlement shares already held by him.

(6) A loan fund company shall not be required to comply with subsection (2) in respect of any option, qualifying shares or loan entitlement shares referred to in that subsection if, before it became a loan fund company, a loan priority number had been allocated in respect of that option or those qualifying shares or loan entitlement shares, as the case may be, and that allocation would have satisfied the requirements of subsection (3) if that subsection had, at the time of the allocation, been in force in respect of the company, and a loan priority number so allocated shall be deemed to have been allocated by the company under subsection (2).

(7) A loan fund company which—

- (a) fails to comply with subsection (1) or (2); or
 (b) contravenes subsection (5),

is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

18. (1) A loan fund company—

(a) shall—

- (i) if it is a company incorporated under the Companies Act, 1961, keep at the place at which the register of members is kept; or
 (ii) if it is a recognised company or a foreign company, keep at the place at which the branch register of members who are resident in New South Wales is kept,

a register of loan priority numbers; and

**Register of
 loan priority
 numbers.**

(b)

Loan Fund Companies.

(b) shall enter in that register in the prescribed manner and in order of allocation—

(i) not later than 21 days after the date on which the company becomes a loan fund company, all loan priority numbers deemed by section 17 (6) to be allocated by the company under section 17 (2), other than those numbers that have previously been entered in a register referred to in subsection (2); and

(ii) not later than 7 days after allocation, all loan priority numbers allocated by the company under section 17 (1) and (2),

together with such particulars with respect to the options to acquire loan entitlement shares or to the qualifying shares or loan entitlement shares to which those numbers relate as are prescribed.

(2) A loan fund company shall not be required to comply with subsection (1) in respect of the entry in the register required to be kept under that subsection of loan priority numbers referred to in section 17 (6) if, before it became a loan fund company, it was keeping a register similar to the register required to be kept under subsection (1) and had entered in that register the particulars with respect to those loan priority numbers and the option, qualifying shares or loan entitlement shares to which the numbers related that it would have been required to enter in the register if that subsection had, at the time of the entry, been in force in respect of the company, and the register so kept shall be deemed to be or to form part of the register required to be kept under subsection (1).

(3) The register kept or deemed to be kept under subsection (1) shall be evidence of any matters entered in it as required or authorised by or under this Act.

(4) Any person who is the holder of an option to acquire loan entitlement shares in a loan fund company, or who is the holder of qualifying shares or loan entitlement
shares

Loan Fund Companies.

shares in a loan fund company, without payment of any fee, and any other person, on the payment of a fee determined by the company, being a fee not exceeding the maximum amount prescribed for the purpose of this subsection, may inspect the register kept or deemed to be kept by the company under subsection (1) at any time during which the register of members, or if the company is a recognised company or a foreign company, the branch register of members who are resident in New South Wales, is open for inspection and may make copies of, or take extracts from, the register so kept or deemed to be kept.

(5) A loan fund company which fails to comply with subsection (1) is guilty of an offence and is liable on conviction to a penalty not exceeding \$500 and, in the case of a continuing failure to comply with subsection (1) (a), to a further penalty not exceeding \$50 for each day during which the offence continues.

19. (1) In this section, "loan", in relation to loan entitlement shares in a loan fund company, means a loan of an amount which, having regard to the memorandum and articles of association of the company or the prospectus under which those shares were allotted, is appropriate to those shares.

Offers of loans to holders of loan entitlement shares in loan fund companies.

(2) Subject to this section, a loan fund company shall not offer a loan to the holder of loan entitlement shares in the company which have a higher loan priority number than that allocated or deemed to have been allocated in respect of other loan entitlement shares in the company unless—

- (a) the company has made a loan in relation to those other loan entitlement shares, either to the holder or to a former holder; or
- (b) where the company has not made a loan in relation to those other loan entitlement shares—
 - (i) the company has offered a loan in relation to those shares, but the holder of those shares has refused the loan or has failed or has been unable to comply with the terms and conditions or any of the terms or conditions on which the loan is offered; or
 - (ii)

Loan Fund Companies.

- (ii) the holder of those shares is for the time being in arrear with the payment of calls or instalments in respect of those shares or has failed to pay any penalty or other amount that is for the time being due in respect of those shares.

(3) A loan fund company shall not offer a loan to the holder of loan entitlement shares in the company which have a higher loan priority number than that allocated in respect of an option to acquire loan entitlement shares in the company or qualifying shares in the company unless—

- (a) the company has given notice in writing, by letter sent to him at his address last known to the company, to the holder of that option or those qualifying shares (being an option or qualifying shares in respect of which he is not for the time being in arrear with the payment of calls or instalments and in respect of which he has paid all penalties and other amounts (if any) that are for the time being due) advising him that, if he does not acquire the loan entitlement shares to which his option relates or, as the case may be, his qualifying shares relate within such period as is specified in the notice, being a period of not less than 21 days, the company proposes to offer the loan to that holder of loan entitlement shares; and
- (b) the holder of that option or those qualifying shares fails within that period to acquire the loan entitlement shares to which his option relates or his qualifying shares relate.

(4) Where the holder of loan entitlement shares in a loan fund company is offered a loan in relation to those shares and he refuses the offer, or fails or is unable to comply with the terms and conditions or any of the terms or conditions on which loan is offered, the company may offer the loan to the holder of the loan entitlement shares in the company which have the next highest loan priority number and

Loan Fund Companies.

so on until the offer is accepted, but any such refusal, failure or inability shall not affect the loan priority number allocated or deemed to have been allocated in respect of the loan entitlement shares of the first mentioned holder or the company's obligation to offer to him a loan in relation to those shares on the next occasion that the company makes offers of loans in relation to loan entitlement shares.

(5) If a loan has been offered by a loan fund company to all of the holders of loan entitlement shares in the company who are eligible by virtue of the memorandum and articles of association of the company to be offered loans by the company and none of those holders has accepted the loan, the company may vary the terms and conditions on which the loan is offered (including the rate of interest at which the loan is to be repayable), but, if the company exercises that power, the provisions of this section shall apply to the offer of the loan as if the loan had not previously been offered and the terms and conditions on which the loan is offered had not been varied.

(6) A loan fund company which contravenes subsection (2) or (3) is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

20. (1) A loan fund company shall, not later than 14 days after the last day of each month, publish in the Gazette and in such newspaper or newspapers circulating in New South Wales as the Supervisor may have specified or approved for the purpose, either generally or specifically—

- Loan fund company to publish certain information.
- (a) the particulars specified in subsection (2) of every offer of a loan made during that month to a person holding loan entitlement shares in the company or, if during that month the company has not made any such offer, a statement to that effect; and
 - (b) the particulars specified in subsection (3) of every loan made during that month to a person holding loan entitlement shares in the company or, if during that month the company has not made any such loan, a statement to that effect.

(2)

Loan Fund Companies.

(2) The particulars referred to in subsection (1) (a) are—

- (a) the date on which the offer was made;
- (b) the loan priority number allocated or deemed to be allocated in respect of the loan entitlement shares held by the person to whom the offer was made;
- (c) the amount offered to that person as a loan; and
- (d) the rate of interest expressed as a percentage per annum that will be payable with respect to the loan if made and the period within which the loan will, if made, be required to be repaid.

(3) The particulars referred to in subsection (1) (b) are—

- (a) the date on which the loan was made;
- (b) the loan priority number allocated or deemed to be allocated in respect of the loan entitlement shares held by the person to whom the loan was made;
- (c) the amount of the loan; and
- (d) the rate of interest expressed as a percentage per annum that is payable with respect to the loan and the period within which the loan is required to be repaid.

Penalty : \$500.

**Register
of option
holders.**

21. (1) Subject to this section, a loan fund company which is incorporated under the Companies Act, 1961, shall, if it has granted or, by virtue of section 15 (7), is deemed to have granted options to acquire loan entitlement shares in the company, keep a register of persons who hold such options and shall, within the period specified in subsection (3), enter in the register with respect to each such person and the option of which he is the holder—

- (a) his name and address;
- (b) the date on which his option was or is deemed to have been granted and the date by which it is required to be exercised;

(c)

Loan Fund Companies.

- (c) the loan priority number allocated in respect of the option and such particulars (if any) with respect to the loan entitlement shares to which the option relates as are prescribed; and
- (d) if he subsequently acquires the shares pursuant to that option, such particulars (if any) of the acquisition, or if he subsequently forfeits or surrenders the option, such particulars (if any) of the forfeiture or surrender, as are prescribed.

(2) Subject to this section, a loan fund company which is a recognised company or a foreign company shall, if it has granted or, by virtue of section 15 (7), is deemed to have granted options to acquire loan entitlement shares in the company, keep a register of persons who are resident in New South Wales and who hold such options and shall, within the period specified in subsection (3), enter in the register with respect to each such person and the option of which he is the holder the particulars specified in subsection (1).

(3) The period within which a loan fund company is required to make an entry referred to in subsection (1) or (2), whichever is applicable, is—

- (a) in the case of a person to whom the company has granted an option to acquire loan entitlement shares in the company before the company became a loan fund company or to whom the company is deemed, by virtue of section 15 (7), to have granted such an option, 7 days after the date on which the company became a loan fund company; and
- (b) in the case of a person to whom the company grants such an option after the company became a loan fund company, 7 days after the date on which the option is granted.

(4) The register required to be kept by a loan fund company under this section—

(a)

Loan Fund Companies.

(a) shall—

- (i) if the company is incorporated under the Companies Act, 1961, be kept at the place at which the register of members is kept; or
 - (ii) if the company is a recognised company or a foreign company, be kept at the place at which the branch register of members who are resident in New South Wales is kept; and
- (b) shall be kept in the manner prescribed by Division 4 of Part V of the Companies Act, 1961, as if the register were a register of members referred to in section 151 of that Act,

and—

- (c) transfers of options entered in the register shall be effected therein in the same manner and at the same charges as transfers of shares effected in the register of members or, where the company is a recognised company or a foreign company, the principal register of members;
- (d) all such transfers of options lodged at the company's registered office or, where the company is a recognised company or a foreign company, at the company's principal or, as the case may be, registered office in New South Wales shall be binding on the company; and
- (e) the Court shall have the same powers in relation to the rectification of the register as it has in respect of the register of members referred to in that section.

(5) Sections 151, 152 and 153 of the Companies Act, 1961, shall, with any necessary modifications, apply respectively to holders of options to acquire loan entitlement shares in a loan fund company and to the register of holders of such options in the same way as they apply to members and to the register of members of the company or, in the

case

Loan Fund Companies.

case of a recognised company or a foreign company, to members who are resident in New South Wales and to the branch register of those members.

(6) Sections 95, 96, 97 (1) and 155 of the Companies Act, 1961, shall, with any necessary modifications, apply respectively to the transfer of options to acquire loan entitlement shares in a loan fund company and to the rectification of the register of persons who are the holders of such options in the same way as they apply to the transfer of shares in the company and to the rectification of the register of members or, where the company is a recognised company or a foreign company, to the transfer of shares of members who are resident in New South Wales and to the rectification of the branch register of those members.

(7) The register kept by a loan fund company under this section shall be evidence of any matters entered in it as required or authorised by or under this Act.

(8) A certificate under the seal of a loan fund company certifying that a person whose name appears in the register of the company kept under this section is the holder of an option to acquire loan entitlement shares specified in the certificate shall be evidence for all purposes of the right of that person to acquire those shares and of the registration in the register of the holding of the option.

(9) Any loan fund company which fails to comply with a provision of this section which is applicable to it is guilty of an offence and is liable on conviction to a penalty not exceeding \$200 and, in the case of a continuing offence, to a further penalty not exceeding \$20 for each day during which the offence continues.

Loan Fund Companies.

Additional
requirements
with respect
to register
of members.

22. (1) A loan fund company incorporated under the Companies Act, 1961, shall, within the period specified in subsection (3), enter in the register of members kept pursuant to section 151 of that Act—

- (a) in respect of each member (if any) who holds qualifying shares in the company, the loan priority number allocated in respect of those shares and such other particulars (if any) as are prescribed; and
- (b) in respect of each member who holds loan entitlement shares in the company—
 - (i) the loan priority number allocated or deemed to be allocated in respect of those shares;
 - (ii) when an offer of a loan is made to him with respect to those shares, the fact that such a loan has been offered, the date of the offer, the amount of the loan offered, the rate of interest expressed as a percentage per annum payable in respect of the loan and the period within which the loan is to be repaid;
 - (iii) when a loan is made to him with respect to those shares, the fact that such a loan has been made, the date on which the loan was made, the amount of the loan, the rate of interest expressed as a percentage per annum payable in respect of the loan and the period within which the loan is repayable;
 - (iv) when a loan referred to in subparagraph (iii) is repaid, the fact and date of repayment; and
 - (v) such other particulars (if any) as are prescribed.

(2)

Loan Fund Companies.

(2) A loan fund company which is a recognised company or a foreign company shall, within the period specified in subsection (3), enter in the branch register of members who are resident in New South Wales kept pursuant to section 343I or, as the case may be, section 354 of the Companies Act, 1961—

- (a) in respect of each such member (if any) who holds qualifying shares in the company, the particulars referred to in subsection (1) (a); and
- (b) in respect of each such member who holds loan entitlement shares in the company, the particulars referred to in subsection (1) (b).

Penalty : \$200 and, in the case of a continuing offence, a further penalty of \$20 for each day during which the offence continues.

(3) The period within which a loan fund company is required to make an entry referred to in subsection (1) or (2), whichever is applicable, is—

- (a) in the case of a person who became a member before the company became a loan fund company, 7 days after the date on which the company became a loan fund company; and
- (b) in the case of a person who becomes a member after the company became a loan fund company, 7 days after the date on which he becomes a member.

23. (1) A loan fund company shall—

Returns.

- (a) within 2 months after the date on which the company becomes a loan fund company or within such further period as the Supervisor may in any particular case allow; and

(b)

Loan Fund Companies.

- (b) in each year within 3 months after the last day of the company's financial year or within such further period as the Supervisor may in any particular case allow,

lodge with the Supervisor a return containing the particulars specified in subsection (2) and accompanied by such documents as are specified in subsection (3).

(2) The particulars required to be contained in the return under subsection (1) are—

- (a) the address, as at the date of lodgment of the return, of—
- (i) the registered office of the loan fund company;
 - (ii) where the company is a recognised company, the principal office of the company in New South Wales; and
 - (iii) where the company is a foreign company, the registered office of the company in New South Wales;
- (b) if the company, being a company incorporated under the Companies Act, 1961, keeps the register of members and the register (if any) kept by the company under section 21 (1) at a place other than its registered office, the address, as at the date of lodgment of the return, at which that register is or those registers are kept;
- (c) if the company, being a recognised company or a foreign company, keeps its branch register of members who are resident in New South Wales and the register (if any) kept by the company under section 21 (2) at a place other than its principal office or, as the case may be, its registered office

in

Loan Fund Companies.

in New South Wales, the address, as at the date of lodgment of the return, at which that register is or those registers are kept;

- (d) all such particulars with respect to the persons who, as at the date of lodgment of the return, are directors of the company and any person who, as at that date, is a manager or secretary of the company as are required by section 134 of the Companies Act, 1961, to be contained in the register of directors, managers and secretaries of the company or, where the company is a recognised company or a foreign company, would be so required if the company were incorporated under the Companies Act, 1961;
- (e) the name and address of every person who, as at the date of lodgment of the return, is an auditor of the company;
- (f) the name and address of every bank at which the company, as at the date of lodgment of the return, maintains an account or keeps any of its funds;
and
- (g) such other particulars (if any) as are prescribed.

(3) The documents required to accompany the return under subsection (1) are—

- (a) a copy, certified by a director, or by the manager or secretary, of the loan fund company to be a true copy of all accounts relating to the company required by section 162 of the Companies Act, 1961, to be made out for or with respect to its financial year immediately preceding the date on which the return is required to be lodged with the Supervisor under subsection (1) or, where the company is a recognised company or a foreign company, a copy so certified of all accounts relating

to

Loan Fund Companies.

to the company which would be required by that section if the company were a public company incorporated under the Companies Act, 1961;

- (b) a copy of the statements required by section 162 of the Companies Act, 1961, to be attached to those accounts or, where the company is a recognised company or a foreign company, which would be so required to be attached to those accounts if the company were a public company incorporated under the Companies Act, 1961;
- (c) a copy of the auditor's report or reports required to be made by section 167 of the Companies Act, 1961, on those accounts or, where the company is a recognised company or a foreign company, which would be required to be made on those accounts if the company were a public company incorporated under the Companies Act, 1961;
- (d) a list in or to the effect of the prescribed form containing the prescribed particulars of loans made by the company during the financial year referred to in paragraph (a); and
- (e) a list in or to the effect of the prescribed form containing the particulars of all vested loan entitlements held by members as at the last day of the financial year referred to in paragraph (a).

(4) A loan fund company shall, not later than 14 days after a change occurs in any particular referred to in subsection (2) in relation to the company, lodge with the Supervisor details in writing of the change.

Penalty : \$200 and, in the case of a continuing offence, a further penalty of \$20 for each day during which the offence continues.

Loan Fund Companies.

24. (1) The Supervisor may, by notice in writing served on a loan fund company or on any officer or agent of any such company, require the company or that officer or agent to lodge with him, within such period as is specified in the notice—

Loan fund company, etc., to provide information in certain cases.

- (a) such particulars as may be so specified with respect to—
 - (i) the granting of options to acquire loan entitlement shares in the company;
 - (ii) the allotment of qualifying shares or loan entitlement shares in the company;
 - (iii) the allocation by the company of loan priority numbers;
 - (iv) the offering of loans by or on behalf of the company;
 - (v) the making of loans by or on behalf of the company; or
 - (vi) the borrowing of money by the company or its methods of raising its funds, whether by means of the allotment of shares or otherwise;
- (b) a report by an actuary appointed by the company on the company's financial position; or
- (c) a special return containing such information with respect to the company or to any of its officers or agents or to its affairs or activities as may be so specified.

(2) A loan fund company on which, or an officer or agent of a loan fund company on whom, a notice under subsection (1) has been served shall not neglect or fail to comply with a requirement contained in the notice when it is within the power of the company or, as the case may be, the officer or agent to comply with that requirement.

Penalty : \$500.

(3)

Loan Fund Companies.

(3) Any information provided pursuant to a requirement contained in a notice served under subsection (1) shall not, if the person providing the information objected, at the time of providing it, to doing so on the ground that it might tend to incriminate him, be admissible in evidence in any proceedings against that person for any offence, not being the offence of contravening subsection (2).

(4) Any requirement contained in a notice served under subsection (1) may be varied or revoked by a later notice served under that subsection.

Powers of
company
with respect
to fees and
penalties.

25. (1) Subject to this section, a loan fund company may, if authorised by its articles of association to do so, impose a penalty—

- (a) on any member for the non-payment of calls or instalments due with respect to shares, whether qualifying shares or loan entitlement shares or shares of any other description, in the company; or
- (b) on any person who is the holder of an option to acquire loan entitlement shares in the company for failure to comply with the terms subject to which the option was granted, or was deemed to have been granted, by the company,

but no penalty exceeding \$5, or such larger amount as may be prescribed, shall be imposed until written notice of intention to impose the penalty and of the reason therefor has been transmitted to that member or person and he has had an opportunity of sending to the company a written statement for the purpose of showing cause why the penalty should not be imposed.

(2) The regulations may fix a maximum amount that a loan fund company may, if authorised by its articles of association to do so—

- (a) charge as a fee for or with respect to any prescribed matter; or

(b)

Loan Fund Companies.

(b) impose as a penalty on any member, or on any person who holds an option to acquire loan entitlement shares in the company, for or with respect to any prescribed matter.

(3) A loan fund company shall not—

(a) charge a fee which exceeds the maximum amount fixed under subsection (2) (a) for or with respect to any prescribed matter; or

(b) impose on a member, or on any person who holds an option to acquire loan entitlement shares in the company, a penalty which exceeds the maximum amount fixed under subsection (2) (b) for or with respect to any prescribed matter.

Penalty : \$200.

(4) Where a loan fund company—

(a) imposes a penalty without complying with subsection (1); or

(b) charges a fee, or imposes a penalty, in excess of the maximum amount fixed under subsection (2) (a) or (b) for or with respect to any prescribed matter,

that penalty or, as the case may be, that fee or penalty, to the extent that it exceeds the amount so fixed, shall not be enforceable against or be recoverable from the member or person in respect of whom it was charged or imposed or, if the penalty or fee has been paid to the company, shall be recoverable in a court of competent jurisdiction by the person who made the payment as a debt due from the company.

DIVISION 3.—Provisions Relating to Funds of Loan Fund Companies.

26. (1) Subject to this section, a loan fund company may, unless prohibited or restricted by its memorandum or articles of association from so doing, receive money on deposit

Borrowing powers of loan fund company.

or

Loan Fund Companies.

or loan, either at interest or at no interest, from any member or from any other person to be applied for the purposes of the company.

(2) A loan fund company shall not receive any money by way of deposit or loan if by so doing the total amount of money so received by the company would exceed an amount equivalent to four-fifths, or such other proportion as may be prescribed, of the unpaid principal secured to the company by mortgage from its members.

Penalty : \$1,000.

(3) Every acknowledgment or security of any kind given by a loan fund company with respect to the receipt of a deposit or loan shall have printed or written on it a statement that the company is only entitled to receive deposits or loans within the limits prescribed by this section.

Penalty : \$200.

(4) No member or other person depositing money with or lending money to a loan fund company shall be concerned with the application of that money by the company or be in any way affected or prejudiced by the fact that the company, in receiving the deposit or loan, has contravened the provisions of this or any other Act or the company's memorandum or articles of association.

**Investment
of surplus
funds.**

27. (1) Subject to subsection (2), a loan fund company may invest any of its funds that are not immediately required for the purpose of operating a loan fund scheme or for any purpose incidental to that purpose in—

- (a) securities authorised by law for the investment of trust funds; or
- (b) any securities, or any securities of a class, prescribed for the purposes of this paragraph.

(2)

Loan Fund Companies.

(2) A loan fund company shall not invest any of the funds of the company referred to in subsection (1)—

- (a) in securities, by way or mortgage or charge, over real or leasehold property; or
- (b) in securities that are not redeemable within a period of 3 years after the date of their acquisition by or on behalf of the company or, where some other period is prescribed, within the prescribed period.

Penalty : \$1,000.

(3) Subsection (2) does not affect the validity of any investment of any of the funds of a loan fund company before it became a loan fund company, but on the redemption or disposal of any such investment, the company shall not re-invest the proceeds from the redemption or disposal in contravention of that subsection or in contravention of section 28.

28. A loan fund company shall not make any investment in securities which it would, but for this section, be authorised to make if the total value of the investments of the company in securities at cost or at their current market value, whichever is the lower, would, after the making of the investment, exceed a value equal to an amount produced by applying the proportion prescribed for the purpose of this section to the aggregate of—

Restrictions on amounts that may be invested.

- (a) the total amount paid up in cash for or with respect to the shares in the company and for or with respect to options to acquire loan entitlement shares granted or deemed to have been granted by the company, including amounts so paid as premiums but excluding any amounts so paid by way of fees or penalties; and
- (b) the total amount of capital and revenue reserves of the company as disclosed in the last balance sheet of the company.

Penalty : \$1,000.

DIVISION

Loan Fund Companies.

DIVISION 4.—*Other Provisions Relating to Operation of Loan Fund Companies.*

Loan fund company not to represent or indicate that it has special status.

29. A loan fund company or person representing or acting on behalf of a loan fund company shall not by any statement made to a person or made in an advertisement represent or indicate, expressly or impliedly, that the company—

- (a) has any special status by virtue of being a loan fund company;
- (b) has in any respect been approved by the Supervisor ;
or
- (c) is supervised or in any way guaranteed or otherwise supported by the Government of New South Wales or any of its agencies or instrumentalities.

Penalty : \$1,000.

Liens over options and shares.

30. A loan fund company which, whether by its memorandum or articles of association or otherwise, has a lien over any option to acquire loan entitlement shares in the company or over any qualifying shares or loan entitlement shares in the company shall not, by virtue of that lien, have a power to sell the option, qualifying shares or loan entitlement shares, but with that exception the company may enforce the lien by the exercise of any other power conferred on it whether by its memorandum or articles of association or otherwise.

Certain provisions of memorandum or articles of association of loan fund company void.

31. Any provision contained in the memorandum or articles of association of a loan fund company which is inconsistent with a provision of this Act or of the regulations shall, to the extent of the inconsistency, be void.

PART

Loan Fund Companies.

PART V.

RIGHTS WITH RESPECT TO SHARES AND OPTIONS TO ACQUIRE
SHARES IN LOAN FUND COMPANIES.

DIVISION 1.—*Rights of Persons Acquiring Shares and
Options.*

32. (1) In this Division, “shares”, unless the context otherwise requires, means qualifying shares or loan entitlement shares, but does not include loan entitlement shares that are or are to be allotted pursuant to the exercise of an option, or the exercise of a right conferred by qualifying shares, to acquire those loan entitlement shares.

Interpre-
tation
for the
purposes
of this
Division.

(2) A reference in this Division to a loan fund company includes a reference to any officer of the company and any person who, with the expressed or implied consent of the company or of any such officer acting in his capacity as such, holds himself out as being a representative of the company.

33. (1) A loan fund company which enters into a contract with a person for the allotment to that person of shares in the company, or for the granting to that person of an option to acquire loan entitlement shares in the company, shall not be entitled to enforce the contract unless the requirements of section 34 are complied with.

Enforce-
ment of
contracts
with:
respect to
allot-
ment, etc.,
of shares
in loan
fund
company
conditional
on com-
pliance
with
certain
require-
ments.

(2) Where by virtue of subsection (1) a loan fund company is not entitled to enforce a contract—

- (a) the company shall not be entitled to enforce any collateral contract or contract of guarantee relating to that contract; and

(b)

Loan Fund Companies.

(b) no security given by—

(i) the person acquiring the shares or option in respect of money payable under that contract or any such collateral contract;

(ii) a guarantor in respect of money payable under that contract or any such collateral contract; or

(iii) a guarantor in respect of money payable under a contract of guarantee relating to that contract or any such collateral contract,

shall be enforceable against the person acquiring the shares or option or against the guarantor, as the case may be, by the holder of such a security.

Require-
ments as to
contracts.

34. (1) The requirements of this section with respect to a contract referred to in section 33 are that—

(a) the contract shall—

(i) be in writing;

(ii) be signed by the person who is acquiring the shares or option and executed by or on behalf of the company; and

(iii) be retained by the company;

(b) the contract shall contain a statement in or to the effect of the form set out in Part I of Schedule 1 which statement shall comply with Part II of that Schedule and be duly completed by or on behalf of the company in accordance with the instructions contained in that Schedule; and

(c)

Loan Fund Companies.

- (c) a copy of the contract, a copy of the form set out in Schedule 2 and a copy of the prospectus under which the shares are or will be allotted or the option is or will be granted shall be given to the person acquiring the shares or option at the time when the contract is entered into.

(2) If, in proceedings before any court, the court is satisfied that—

- (a) a failure to comply with any requirement of subsection (1) is a failure of a minor nature which has not detrimentally affected the person acquiring the shares or option; and
- (b) it would be just and equitable to dispense with the requirement,

the court may, subject to such conditions as it thinks fit to impose, dispense with that requirement for the purposes of those proceedings.

35. (1) A person acquiring shares or an option under a contract which complies with section 34 (1) may cancel that contract at any time before the end of the period of 1 month beginning with the day after the date on which the contract was entered into by giving to the loan fund company named in the statement required under section 34 (1) (b) a notice in or to the effect of the form set out in Schedule 2 or any other written form of notice if, however expressed, it indicates the intention of the person to cancel the contract. Right of cancellation.

(2) Notice pursuant to subsection (1) may be given—

- (a) by delivering it personally at the address specified in the statement required under section 34 (1) (b);
or

(b)

Loan Fund Companies.

- (b) by properly addressing, prepaying the postage on and posting a letter containing the notice to the loan fund company specified in that statement at that address.

(3) If the notice is posted in accordance with subsection (2) (b), the notice shall be deemed to have been given to the loan fund company at the time when it is posted.

**Effect of
cancellation.**

36. (1) Where notice of cancellation is given pursuant to section 35—

- (a) the contract to which the notice relates shall be deemed to have been rescinded by mutual consent and never to have had effect;
- (b) any collateral contract or contract of guarantee relating to that contract shall be deemed never to have had effect;
- (c) any security given by—
- (i) the person acquiring the shares or option in respect of money payable under that contract or any such collateral contract;
 - (ii) a guarantor in respect of money payable under that contract or any such collateral contract; or
 - (iii) a guarantor in respect of money payable under a contract of guarantee relating to that contract or any such collateral contract,
- shall be deemed never to have been enforceable;
and

(d)

Loan Fund Companies.

(d) any money paid under that contract or any such collateral contract or contract of guarantee shall be due from and repayable by the loan fund company.

(2) Any money repayable under subsection (1) (d) shall be recoverable in a court of competent jurisdiction as a debt, and in any proceedings by a person for the recovery of that money, that person shall, if successful, be entitled to recover his full costs, fees and other reasonable expenses, including reasonable costs incurred between solicitor and client.

37. (1) This Division shall have effect with respect to a contract referred to in section 33 notwithstanding any provision to the contrary in the contract. No contract-ing out.

(2) Any transaction entered into or any contract or arrangement made, whether orally or in writing, for the purpose of or having the effect of in any way, whether directly or indirectly, defeating, evading, avoiding or preventing the operation of this Division in any respect shall be unenforceable except that any money paid as part of any such transaction or under any such contract or arrangement may be recovered by the person who paid it from the person to whom it was paid.

38. (1) Any loan fund company which fails, within 1 month after a person has given notice to the company under section 35 of the cancellation of a contract, to repay any money due to or in respect of that person by virtue of section 36 (1) (d) is guilty of an offence and is liable on conviction to a penalty not exceeding \$500. Offence for loan fund company to fail to repay money.

(2) On the conviction of a loan fund company of an offence under subsection (1), the court may make an order for the payment by the company of an amount equal to the money due from the company by virtue of section 36 (1) (d)

to

Loan Fund Companies.

to or in respect of the person referred to in subsection (1) unless the money has previously been recovered by that person under section 36 (2).

DIVISION 2.—*Rights of Shareholders and Optionholders to Attend and Vote at Meetings.*

Voting rights attaching to options and shares and rights of holders thereof to attend and vote at general meetings of a loan fund company.

39. (1) In respect of—

- (a) an option to acquire loan entitlement shares in a loan fund company;
- (b) qualifying shares in a loan fund company;
- (c) loan entitlement shares in a loan fund company; and
- (d) shares in a loan fund company of a class or description other than those referred to in paragraphs (b) and (c),

there shall, notwithstanding any provision of the Companies Act, 1961, to the contrary, be attached a right to exercise, subject to subsection (2), such number of votes at general meetings of the company as equals the number of whole dollars paid up, or credited as paid up, in respect of the option, qualifying shares, loan entitlement shares or other shares, including any money paid, or credited as paid, as a premium in respect thereof but excluding any money paid as a fee or penalty in respect thereof.

(2)

Loan Fund Companies.

(2) Every holder of—

- (a) an option to acquire loan entitlement shares in a loan fund company;
- (b) qualifying shares in a loan fund company;
- (c) loan entitlement shares in a loan fund company; or
- (d) other shares in a loan fund company.

to which a voting right is attached by virtue of subsection (1) shall, notwithstanding any provision of the Companies Act, 1961, to the contrary, be entitled—

- (e) to be given, subject to the provisions of the Companies Act, 1961, relating to special resolutions and agreements for shorter notice, notice of the place at which, the date on which and the time at which any general meeting of the company is to be held at least 14 days before the date of the meeting, and if any special business is to be conducted at the meeting, particulars of the nature of the business;
- (f) to attend any general meeting of the company;
- (g) on attending a general meeting of the company, to speak at the meeting and—
 - (i) in the case of a resolution put to the meeting and decided by a show of hands, to exercise one vote; or

(ii)

Loan Fund Companies.

- (ii) in the case of a resolution so put in respect of which a poll is taken, to exercise the voting right conferred on him by subsection (1) and ascertained in accordance with that subsection as at the fourteenth day before the date of the meeting; and

- (h) to be given notice in terms of paragraph (e) and to exercise the rights conferred on him by paragraphs (f) and (g), notwithstanding that all calls, instalments or other sums presently due and payable by him in respect of the option or shares held by him may not have been paid.

(3) Division 3 of Part V of the Companies Act, 1961, shall, except so far as modified by this section, apply to and in relation to holders of options to acquire loan entitlement shares in a loan fund company, being options to which voting rights are attached by virtue of subsection (1), and to and in relation to the loan entitlement shares in respect of which those options are held, in the same way as it applies to and in relation to members of the company and to and in relation to shares in the company held by those members, and for the purpose of that application—

(a) a reference to—

- (i) members having the right to vote at, or entitled to attend and vote at, or holding shares conferring a right to vote at, a general meeting of a company;

- (ii) members entitled to have or be sent notices of general meetings of a company,

shall

Loan Fund Companies.

shall be construed as including holders of options to acquire loan entitlement shares in the loan fund company, being options to which voting rights are attached by virtue of subsection (1);

- (b) a reference to shareholders or holders of shares shall be construed as including the holders of any such options; and
- (c) a reference to paid up share capital shall be construed as including amounts (including premiums) paid, or credited as paid, to the loan fund company in respect of options to acquire loan entitlement shares in the company but as excluding any amount so paid as a fee or penalty.

(4) Where, in relation to the calling and holding of general meetings of a loan fund company, the moving of resolutions at such meetings and the voting on those resolutions—

- (a) any provision of the memorandum or articles of association of the company confers a right on, or imposes on the company an obligation towards, some of the holders of options or shares to which voting rights are attached by virtue of this section but not on other such holders; and
- (b) the right so conferred or the obligation so imposed, as the case may be, is in addition to the rights conferred, or the obligations imposed, by this section,

that provision shall be deemed to apply so as to confer that right on, or impose on the company that obligation towards, those other holders in the same way and to the same extent as it confers that right, or imposes on the company that obligation towards, the first mentioned holders.

(5)

Loan Fund Companies.

(5) For the purpose of any provision of the articles of association of a loan fund company which requires a quorum of members to be present at the time when the meeting proceeds to business, the reference to "members" shall be construed as including the holder of any option or shares to which a voting right is attached by virtue of subsection (1).

DIVISION 3.—*Transmission and Transfer of Shares and Options.*

Rights of transferees, etc., of shares and options.

40. (1) A person to whom any option to acquire loan entitlement shares in a loan fund company is, or any qualifying shares or loan entitlement shares in a loan fund company are, transmitted by operation of law or transferred shall have the same rights under or with respect to the option, qualifying shares or loan entitlement shares, including all rights with respect to the obtaining of a loan from the company, as those which were held by the person from or by whom the option was, or the qualifying shares or loan entitlement shares were, transmitted or transferred, as the case may be.

(2) The transmission or transfer of any option, qualifying shares or loan entitlement shares referred to in subsection (1) shall not affect the loan priority number allocated or deemed to have been allocated in respect of that option or those qualifying shares or loan entitlement shares.

DIVISION 4.—*Forfeiture or Surrender of Shares and Options.*

Application of Division.

41. The provisions of this Division have effect notwithstanding section 64 of the Companies Act, 1961, or any other enactment or rule of law.

Forfeiture of options and shares.

42. (1) If at any time the holder of—

- (a) an option to acquire loan entitlement shares in a loan fund company;
- (b) qualifying shares in a loan fund company; or
- (c)

Loan Fund Companies.

- (c) loan entitlement shares in a loan fund company in respect of which the company has not made a loan or the holder does not have a vested loan entitlement,

is in arrears with the payment of calls or instalments due with respect to the option or shares and the amount of those arrears, together with any penalties that may have been imposed on him by the company in respect of the option or shares, exceeds an amount calculated as prescribed, the directors of the company may, at any time during which those arrears and any such penalties exceed the amount so calculated, serve a notice on him requiring payment of so much of those calls or instalments as is unpaid, together with any penalties which may have accrued in respect thereof.

(2) The notice referred to in subsection (1) shall, in addition to specifying the amount due and required to be paid with respect to the option or shares, specify—

- (a) a date, not earlier than the expiration of 2 months from the date of service of the notice, on or before which the payment required by the notice is to be made; and
- (b) that, in the event of non-payment of the amount at or before that date, the option or shares will be liable to be forfeited to the loan fund company.

(3) If the requirements of the notice referred to in subsection (1) are not complied with within the period specified in the notice, the loan fund company may, by resolution of its directors at any time thereafter and before the payment required by the notice has been made, declare the option or shares to which the notice relates to be forfeited to the company and thereupon the option or shares shall be so forfeited.

(4)

Loan Fund Companies.

(4) A forfeiture of shares under subsection (3) in respect of which any dividend has been declared but not actually paid before the forfeiture shall include that dividend.

(5) A person whose option has, or whose shares have, been forfeited under this section shall cease to be the holder of that option or, as the case may be, to be a member with respect to those shares, but he shall remain liable to pay to the loan fund company all money (including the amount of any penalty lawfully imposed by the company with respect to the option or shares) which, at the date of forfeiture, was payable by him to the company in respect of the option or shares.

(6) The forfeiture of any option or shares referred to in subsection (1) for non-payment of calls or instalments on terms less favourable to the holder of that option or those shares than those provided for in this section shall be of no effect.

Surrender
of options
and
shares.

43. (1) Subject to this section, the holder of—

- (a) an option to acquire loan entitlement shares in a loan fund company;
- (b) qualifying shares in a loan fund company; or
- (c) loan entitlement shares in a loan fund company in respect of which the company has not made a loan or the holder does not have a vested loan entitlement,

may, by notice in writing served on the company, surrender that option or, as the case may be, those shares to the company if, at the date of service of the notice, all amounts due to the company in respect of that option or those shares have been paid.

(2)

Loan Fund Companies.

(2) The right conferred by subsection (1) is not, except with the agreement of the loan fund company concerned, exercisable—

(a) in the case of—

- (i) an option to acquire loan entitlement shares;
- (ii) qualifying shares; or
- (iii) loan entitlement shares acquired pursuant to the exercise of any such option or the exercise of a right conferred by any such qualifying shares,

until the expiration of the prescribed period from the date, whether before or after the commencement of this section, on which that option was granted or, as the case may be, those qualifying shares were allotted; or

(b) in the case of loan entitlement shares other than loan entitlement shares referred to in paragraph (a) (iii), until the expiration of the prescribed period from the date, whether before or after the commencement of this section, on which those shares were allotted.

(3) The notice referred to in subsection (1) shall—

- (a) be in or to the effect of the prescribed form; and
- (b) be accompanied by the option that is, or the shares that are, to be surrendered.

(4) A surrender of an option or shares in accordance with this section shall be effective on and from the date of the service of the notice on the loan fund company under subsection (1).

(5)

Loan Fund Companies.

(5) Not later than 7 days after being served with a notice under subsection (1), the loan fund company shall send to the person who surrendered the option or, as the case may be, the shares a letter by certified mail acknowledging the receipt of the notice.

Penalty : \$200.

(6) A person whose option has, or whose shares have, been surrendered under this section shall cease to be the holder of that option or, as the case may be, to be a member in respect of those shares and shall not be required to pay to the loan fund company any further calls or instalments in respect of the option or shares, but, in the case of surrendered shares, he shall not be entitled to receive any dividends declared in respect of those shares and not actually paid before the surrender.

Money from
forfeited or
surrendered
options or
shares to be
transferred
to a reserve.

44. A loan fund company—

- (a) shall have and maintain a reserve for the purposes of this Division and shall transfer to that reserve all money received by it with respect to options or shares forfeited or surrendered to the company under section 42 or 43, as the case may be, after deducting any part of that money that is attributable to fees or penalties; and
- (b) shall not distribute any money transferred to the reserve maintained under paragraph (a) as dividends, but may use the money in the repayment of amounts under section 46 or for any purpose for which the company is, by its memorandum or articles of association, authorised to use its capital.

Penalty : \$500.

45.

Loan Fund Companies.

45. (1) A loan fund company—

Register
of for-
feitures
and
surrenders
to be kept.

(a) shall—

- (i) if it is a company incorporated under the Companies Act, 1961, keep at the place at which the register of members is kept; or
- (ii) if it is a recognised company or a foreign company, keep at the place at which the branch register of members who are resident in New South Wales is kept,

a register of forfeitures and surrenders of options and shares; and

(b) shall, within 7 days after the date on which any option is or any shares are forfeited or surrendered to the company in accordance with section 42 or 43, as the case may be, enter in that register—

- (i) the name of the person whose option was, or shares were, forfeited or surrendered and such other particulars with respect to that person as are prescribed; and
- (ii) such particulars with respect to that option or those shares as are prescribed,

in the order in which the forfeiture or surrender occurred.

Penalty : \$500 and, in the case of a continuing offence, a further penalty of \$50 for each day during which the offence continues.

(2) The register kept by a loan fund company under subsection (1) shall be evidence of any matters entered in it as required or authorised by or under this Act.

(3)

Loan Fund Companies.

(3) Any member and any person whose option has, or shares have, been forfeited or surrendered to a loan fund company under section 42 or 43, as the case may be, without payment of any fee, and any other person, on the payment of a fee determined by the company, being a fee not exceeding the maximum amount prescribed for the purpose of this subsection, may inspect the register kept by the company under subsection (1) at any time during which the register of members or, if the company is a recognised company or a foreign company, the branch register of members who are resident in New South Wales, is open for inspection and may make copies of, or take extracts from, the register so kept.

Payment of amounts by loan fund company in respect of forfeited or surrendered options and shares, etc.

46. (1) Where, after a company has become a loan fund company, any option to acquire loan entitlement shares has, or any qualifying shares or loan entitlement shares have, been forfeited or surrendered to the company under section 42 or 43, there shall be payable by the company to the person whose option was, or shares were, forfeited or surrendered, or if that person is dead or under a legal disability, to such person as appears to the company to be his lawful representative—

- (a) the total amount that was paid in respect of the option, qualifying shares or loan entitlement shares (including any amount so paid as a premium) after deducting—
 - (i) any fee or penalty paid or payable in respect of the option, qualifying shares or loan entitlement shares before or at the date of the forfeiture or surrender;
 - (ii) in the case of a forfeited option or forfeited qualifying shares or loan entitlement shares, an amount equal to the prescribed proportion of the nominal value of the loan entitlement shares to which the forfeited option relates or, as the case may be, of the forfeited qualifying shares or loan entitlement shares; and

(iii)

Loan Fund Companies.

- (iii) if the last balance sheet of the company preceding the date on which the amount becomes payable discloses an accumulated loss, an amount, which shall be offset against that loss, calculated by reference to the following formula :—

$$a = b \times \frac{c}{d}$$

where—

a = the amount to be deducted under this subparagraph;

b = the amount of the accumulated loss ;

c = the total nominal value of the loan entitlement shares to which the forfeited or surrendered option relates or, as the case may be, of the forfeited or surrendered qualifying shares or loan entitlement shares ;
and

d = the total nominal value of all issued shares of the company as at the date to which the balance sheet referred to in this subparagraph is made up ;
or

(b) if—

(i) any provision of the memorandum or articles of association of the company provides; or

(ii) the prospectus under which the option was granted or, as the case may be, the qualifying shares or loan entitlement shares were allotted provided,

for an amount to be payable by the company in respect of forfeited or surrendered options to acquire loan entitlement shares in the company or, as the

case

Loan Fund Companies.

case may be, forfeited or surrendered qualifying shares or loan entitlement shares in the company which is greater than that which would, but for this paragraph, be payable under paragraph (a), that amount,

but the amount so payable shall not become due until the expiration of a period of 3 years after the date of the forfeiture or surrender or, if any provision of the memorandum or articles of association of the company, or any relevant prospectus, provides for that amount to become due at a date before the expiration of that period, until that date has arrived.

(2) Where—

- (a) in relation to a company that has become a loan fund company, any option to acquire loan entitlement shares in the company, or any option nomination relating to any such shares, has, before the company became a loan fund company, been surrendered to the company or to any person managing, controlling or promoting the affairs and activities, or any of the affairs or activities, of the company;
- (b) the prospectus under which the option or option nomination was granted provided for an amount, ascertainable by reference to the prospectus, to be payable in respect of the option or option nomination in the event of its being surrendered; and
- (c) the amount referred to in paragraph (b) has not, before the company became a loan fund company, been paid in accordance with the terms and conditions of the prospectus to any person entitled to receive it,

that amount shall be payable by the company to the person whose option or option nomination was surrendered or, if he has died or is under a legal disability, to such person as appears to the company to be the lawful representative of

that

Loan Fund Companies.

that person, but shall not become due from the company until the expiration of a period of 3 years after the date on which the company became a loan fund company or, if the prospectus referred to in paragraph (b) provides for the amount to become due at a date before the expiration of that period, until that date has arrived.

(3) If at any time amounts are payable to 2 or more persons by a loan fund company either under subsection (1) in respect of forfeited or surrendered options, qualifying shares or loan entitlement shares or under subsection (2) in respect of surrendered options or option nominations, the company shall pay those amounts to those persons only according to the order in which the forfeiture or surrender of those options, qualifying shares or loan entitlement shares, or, as the case may be, the surrender of those options or option nominations, occurred and not otherwise.

(4) Subject to this section, a loan fund company may, notwithstanding that its memorandum of association does not, or its articles of association do not, so provide or provides or provide to the contrary, pay an amount payable under subsection (1) or (2) before it becomes due, but only if it is paid out of money received from members as repayments of the principal of loans made by the company to those members or out of the reserve kept under section 44.

(5) If a loan fund company has not paid an amount payable by it under subsection (1) or (2) before the date on which the amount becomes due thereunder, the following provisions shall apply :—

- (a) all of the company's funds shall be available for the payment of the amount;
- (b) the company shall not, until the amount has been paid, offer or make any further loans to members or to any other persons; and

(c)

Loan Fund Companies.

- (c) without prejudice to any prosecution for an offence against subsection (6), the amount shall, on and after that date, be recoverable from the company as a debt in a court of competent jurisdiction by the person to whom the amount is payable.

(6) Any loan fund company which—

- (a) fails to pay any amount payable under subsection (1) or (2) within 3 months after the date on which the amount becomes due;
- (b) pays any amount in contravention of subsection (3) or (4); or
- (c) contravenes subsection (5) (b),

is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

Cancellation of options and shares.

47. On the forfeiture or surrender of any option or shares under section 42 or 43, as the case may be, the option or shares shall be deemed to be cancelled.

PART VI.

**SPECIAL POWERS WITH RESPECT TO THE SUPERVISION OF
LOAN FUND COMPANIES.**

DIVISION 1.—Inspections.

Powers of inspection.

- 48.** (1) The Supervisor or any inspector may—
- (a) for the purpose of ascertaining whether a person is, or at any time has been, operating, or managing, controlling or promoting the operation of, a loan fund scheme in contravention of this Act or whether

a

Loan Fund Companies.

a loan fund company is contravening or not complying with, or has contravened or not complied with, this Act, inspect and make copies of, or take extracts from—

- (i) any records kept by that person or company with respect to any of the affairs or activities of that person or company;
 - (ii) any bankers' books so far as they relate to the business carried on by that person or company; and
 - (iii) in the case of a loan fund company that is being wound up, any records kept by the liquidator of the company; and
- (b) for that purpose may, subject to section 7, enter at any reasonable time any place at which that person or company carries on business or at which the Supervisor or that inspector has reasonable grounds for believing that any such records or bankers' books, as the case may be, are kept.

(2) For the purpose of and in connection with an inspection under subsection (1), the Supervisor or any inspector may—

- (a) request any person employed or engaged at any place entered pursuant to that subsection to produce to the Supervisor or inspector such records, or, as the case may be, such bankers' books, relating to any of the affairs or activities of the person or company as are in the custody or under the control of the person so employed or engaged;
- (b) examine with respect to matters under this Act any person employed or engaged at any place so entered; and

(c)

Loan Fund Companies.

(c) make such examination and inquiries as he thinks necessary to ascertain whether the requirements of this Act are being or have been complied with or contravened.

(3) Subject to subsection (4), the expenses of and incidental to the carrying out of inspections under subsection (1) shall be defrayed out of money provided by Parliament for the purpose.

(4) Where an inspection has been carried out under subsection (1) with respect to a person or a loan fund company, the Supervisor may give a direction in writing requiring that person or company, within such period (being not less than 7 days) as is specified in the direction, to pay to the Supervisor in respect of that inspection a fee of such amount or at such rate as is prescribed and may serve the direction on that person or company.

(5) If the person on whom or the loan fund company on which the direction is served fails to pay the fee specified in the direction within the period so specified, the amount of the fee shall be recoverable from that person or company in a court of competent jurisdiction as a debt due to the Crown.

DIVISION 2.—*Inquiries.*

Interpre-
tation for
the purposes
of this
Division.

49. In this Division, "specified person" means a person suspected or believed by the Supervisor, on reasonable grounds, to be capable of giving information concerning any matter being inquired into pursuant to this Division.

Power to
hold
inquiry.

50. (1) Where the Minister is of the opinion that to do so would be in the public interest or in the interests of any members or creditors of, or holders of options to acquire loan entitlement shares in, a loan fund company, he may, either

of

Loan Fund Companies.

of his own volition or on the application of any person claiming to have an interest in the company, whether as a member or creditor of, or the holder of an option to acquire loan entitlement shares in, the company or otherwise, appoint the Supervisor to hold an inquiry into the affairs and activities of the company, including the operation and financial circumstances of the company, or into such of those affairs or activities as the Minister may determine.

(2) If an application referred to in subsection (1) is made by a person for an inquiry to be held under this Division, the Minister may require the applicant to produce such evidence as he thinks necessary to enable him to determine whether there are reasonable grounds for appointing the Supervisor to hold an inquiry under this Division.

(3) Where the Supervisor has been appointed to hold an inquiry under this Division, he shall forthwith notify the loan fund company concerned in writing of that appointment and of the terms of that appointment.

51. (1) For the purposes of an inquiry under this Division, the Supervisor may, by notice in the prescribed form given in the prescribed manner, require a specified person—

Procedure
with respect
to holding
of inquiry.

- (a) to produce to the Supervisor such records relating to a matter to which his inquiry relates as are in the custody or under the control of that person;
- (b) to give to the Supervisor all reasonable assistance in connection with the inquiry; and
- (c) to attend before the Supervisor for examination on oath,

and may administer an oath to that person.

(2)

Loan Fund Companies.

(2) Where records are produced to the Supervisor under this section, the Supervisor may take possession of those records for such period as he thinks necessary for the purposes of the inquiry, and during that period he shall permit a person who would be entitled to inspect those records if they were not in the possession of the Supervisor to inspect at all reasonable times such of those records as that person would be so entitled to inspect.

(3) A specified person shall not—

- (a) refuse or fail to comply with a requirement of the Supervisor under subsection (1) to the extent to which he is able to comply with it;
- (b) in purported compliance with such a requirement provide information which is to his knowledge false or misleading as to a material particular; or
- (c) when appearing before the Supervisor for examination pursuant to such a requirement—
 - (i) make a statement which is to his knowledge false or misleading as to a material particular; or
 - (ii) refuse or fail to take an oath.

Penalty : \$1,000.

(4) A duly qualified legal practitioner acting for a specified person may—

- (a) attend an examination of that person; and
- (b) with the permission of the Supervisor—
 - (i) address the Supervisor; and
 - (ii) examine that person,

in relation to matters in respect of which the Supervisor has questioned that person.

(5)

Loan Fund Companies.

(5) A specified person is not excused from answering a question put to him by the Supervisor on the ground that the answer might tend to incriminate him but, where that person claims, before answering the question, that the answer might incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings other than proceedings under subsection (3) or in relation to a charge of perjury in respect of the answer.

(6) A specified person who complies with a requirement of the Supervisor under subsection (1) does not incur a liability to any person by reason only of that compliance.

(7) A specified person who is required to attend for examination under subsection (1) is entitled to such allowances and expenses (if any) as are prescribed, whether by reference to a scale of expenses for witnesses who attend before a court or otherwise.

(8) Where the Supervisor is satisfied that a specified person has failed without lawful excuse to comply with a requirement of the Supervisor to the extent to which he is capable of complying with it, the Supervisor may certify the failure in writing under his hand to the Court.

(9) Where the Supervisor gives a certificate under subsection (8), the Court may inquire into the case and, if it is satisfied that the specified person to whom the certificate relates has failed without lawful excuse to comply with a requirement of the Supervisor to the extent to which that capable of complying with it—

- (a) may order the specified person to comply with the requirement within such period as is fixed by the Court; or
- (b) may punish the specified person in the same way as if he had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

(10)

Loan Fund Companies.

(10) An inquiry under this Division shall, for the purpose of Part IV of the Evidence Act, 1898, be deemed to be a legal proceeding.

(11) The Supervisor shall cause notes of an examination made by him under this section to be recorded in writing and may require a specified person to sign the notes and, subject to this section, notes signed by that person may be used in evidence in any legal proceedings against that person.

(12) A copy of the notes signed by a specified person shall be provided by the Supervisor, without charge, to that person on request made by that person in writing.

(13) Notes made pursuant to this section that relate to a question the answer to which a specified person has claimed might tend to incriminate him may not be used as evidence in criminal proceedings other than proceedings under subsection (3) or in relation to a charge of perjury in respect of the answer.

Report of
Supervisor.

52. (1) When the Supervisor has completed his inquiry under this Division, he shall prepare and give to the Minister a report of his findings and, subject to subsection (2), unless there is in the opinion of the Minister good reason for not divulging the contents of the report, give a copy of the report to each person to whom, in the opinion of the Minister, the report ought to be given by reason that it extends to any of the affairs or activities of that person to a material extent.

(2) Subject to subsection (3), the Supervisor shall not give a copy of a report prepared under subsection (1) to a person if the Minister believes that legal proceedings that have been, or that in his opinion might be, instituted might be unduly prejudiced by giving the report to that person.

(3)

Loan Fund Companies.

(3) The court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report prepared under subsection (1) may order that a copy of the report be given to that person.

(4) The Minister may, if he is of the opinion that it is in the public interest to do so, cause the whole or any part of a report prepared under subsection (1) to be printed and published.

(5) If, from a report prepared under subsection (1) or from notes of an examination made under section 51, it appears to the Minister that an offence may have been committed by a person and that a prosecution ought to be instituted, the Minister shall cause a prosecution to be instituted and prosecuted.

(6) Where it appears to the Minister that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (5), require a person whom he suspects or believes on reasonable grounds to be capable of giving information concerning any matter to which the prosecution relates (not being a person who is or, in the opinion of the Minister, is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person) to give all assistance in connection with the prosecution or proposed prosecution that that person is reasonably capable of giving.

(7) Where a person to whom a notice has been given under subsection (6) fails to comply with a requirement specified in the notice, the court referred to in subsection (3) may, on the application of the Minister, direct that person to comply with the requirement.

(8)

Loan Fund Companies.

(8) If from a report prepared under subsection (1), or from the notes of an examination made under section 51, the Minister is of the opinion that proceedings ought in the public interest to be brought by a loan fund company for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with the matters to which the inquiry relates or for the recovery of property of the company, the Minister may cause proceedings to be brought accordingly in the name of the company.

Further powers of Supervisor after inquiry.

53. After completing an inquiry under this Division, the Supervisor—

- (a) may retain the records of which he has taken possession under section 51 for such period as he considers to be necessary to enable a decision to be made as to whether or not legal proceedings ought to be instituted as a result of the inquiry;
- (b) may retain the records for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the records while they are in his possession;
- (d) may permit the use of the records for the purposes of legal proceedings instituted as a result of the inquiry; and
- (e) shall permit a person who would be entitled to inspect any one or more of the records if they were not in the possession of the Supervisor to inspect at all reasonable times such of the records as that person would be so entitled to inspect.

Privileged communication.

54. The Supervisor shall not require disclosure by a duly qualified legal practitioner of a privileged communication made to the practitioner in his capacity as such except as regards the name and address of his client.

55.

Loan Fund Companies.

55. (1) Subject to this section, the expenses of and incidental to an inquiry under this Division (including the expenses incurred and payable by the Minister in proceedings brought by him in the name of a loan fund company under section 52 (8)) shall be defrayed out of money provided by Parliament for the purpose. ^{Expenses of inquiry.}

(2) The Minister may, with respect to an inquiry under this Division, give a direction—

- (a) that any loan fund company or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, pay the whole or a specified part of the expenses of and incidental to the inquiry;
- (b) where expenses have been defrayed under subsection (1), that any loan fund company or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, pay those expenses or reimburse the Crown to the extent thereof; or
- (c) that any loan fund company or specified person concerned in the inquiry, within such period (being not less than 7 days) as is specified in the direction, pay, or reimburse the Crown in respect of, the remuneration of any servant of the Crown concerned with the inquiry,

and serve the direction on that company or person.

(3) If a loan fund company on which or a person on whom a direction has been served under subsection (2) fails to pay the amount specified in the direction within the period so specified, that amount shall be recoverable from that company or person in a court of competent jurisdiction as a debt due to the Crown.

Loan Fund Companies.

Concealing,
etc., of
records.

56. (1) A person who—

- (a) conceals, destroys, mutilates or alters a record that is the subject of an inquiry by the Supervisor under this Division; or
- (b) sends, attempts to send or conspires with another person to send such a record out of New South Wales,

is guilty of an offence and is liable on conviction to a penalty not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years.

(2) It is a defence to a prosecution under this section to prove that the person charged did not act with intent to defeat the purposes of this Division or to delay or obstruct the holding of an inquiry under this Division.

DIVISION 3.—*Powers to Control Prospectuses and Advertising, to Suspend Acceptances of Money and to Appoint Administrators.*

Powers of
Supervisor
with respect
to pros-
pectuses.

57. (1) A prospectus relating to a loan fund company or a company proposing to operate a loan fund scheme shall not be issued, circulated or distributed before the expiration of 7 days after the date on which a copy of the proposed prospectus has first been lodged with the Supervisor.

(2) Where a copy of a proposed prospectus has been lodged with the Supervisor in accordance with subsection (1), he may, by notice served on the company concerned within 7 days after the date of that lodgment, require—

- (a) that, before the prospectus is issued, circulated or distributed, there be included in the prospectus such information relating to the rights and obligations of persons who may apply for, subscribe for, purchase

or

Loan Fund Companies.

or otherwise acquire shares or options to acquire shares in the company as may be specified in the notice; and

(b) that that information be in such form, or be presented in such manner, as may be so specified.

(3) Where the Supervisor has served a notice in accordance with subsection (2), a prospectus to which the notice relates shall not be issued, circulated or distributed unless the requirements of that notice have been complied with.

(4) If a prospectus is issued, circulated or distributed in contravention of subsection (1) or (3), the company concerned and every person who is knowingly a party to that issue, circulation or distribution is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

(5) Nothing in this section affects the operation of Part IV of the Companies Act, 1961, with respect to a company to which this section applies and, where any requirement imposed under this section is inconsistent with a provision of that Part, that requirement shall, to the extent of that inconsistency, have no force or effect.

58. (1) If with respect to any loan fund company the Supervisor considers that it is desirable to do so in the interests of persons who may become members of, or who may be granted options to acquire loan entitlement shares in, the company, he may, by notice in writing served on the company or on any person acting or appearing to act on behalf of the company, direct the company or that person—

(a) not to issue or publish—

(i) any advertisement relating to the company's affairs or activities;

(ii) such advertisements relating to the company's affairs or activities as may be specified in the notice; or

(iii)

Loan Fund Companies.

- (iii) advertisements relating to the company's affairs or activities of such description as may be so specified; or
- (b) to remove or cause to be removed from all public places, or from any public place specified in the notice or of a description so specified—
 - (i) all advertisements thereon or therein relating to the company's affairs or activities;
 - (ii) such advertisements thereon or therein relating to the company's affairs or activities as may be so specified; or
 - (iii) advertisements thereon or therein relating to the company's affairs or activities of such description as may be so specified.

(2) The Supervisor may at any time revoke a direction under subsection (1).

(3) The Supervisor may at any time vary a direction under subsection (1) by notice in writing served on the loan fund company on which, or the person on whom, the direction was served under that subsection.

(4) A direction under subsection (1) may be made notwithstanding that any advertisement to which the direction applies otherwise complies with or does not contravene the provisions of any other Act.

(5) A loan fund company on which, or a person on whom, a direction has been served under subsection (1) shall, while the direction remains in force, take all reasonable steps to comply with the direction, notwithstanding that representations may have been made in respect of the direction under subsection (7).

Penalty : \$500.

(6)

Loan Fund Companies.

(6) In any proceedings under subsection (5), the onus of proving that all reasonable steps have been taken to comply with the direction shall be on the defendant.

(7) Where notice of a direction under subsection (1) has been served on a loan fund company or a person in accordance with that subsection, that company or, as the case may be, that person may, not later than 14 days after the date of that service, make representations in writing with respect to the direction to the Minister, and the Supervisor shall, if the Minister requires him to do so after considering those representations, revoke the direction.

(8) On the revocation of a direction under subsection (2) or (7), the Supervisor shall notify the loan fund company or person concerned in writing that the direction has been revoked.

59. (1) If with respect to any loan fund company the Supervisor considers that it is desirable to do so in the interests of persons who may become members of, or who may be granted options to acquire loan entitlement shares in, or who may deposit money with or otherwise lend money to, the company, he may, by notice in writing served on the company, give to the company either or both of the following directions :—

Power to suspend the acceptance of money by loan fund companies.

- (a) a direction not to accept money in consideration of the allotment of qualifying shares or loan entitlement shares in the company or the granting of any option to acquire loan entitlement shares in the company;
- (b) a direction not to accept money on deposit or otherwise on loan.

(2)

Loan Fund Companies.

(2) Where notice of a direction under subsection (1) is served on a loan fund company, that direction does not prevent the company—

- (a) from accepting the whole or any part of an amount which became due and payable to the company in respect of shares allotted, or options to acquire loan entitlement shares granted, or deemed to have been granted, by the company before the service of the notice; or
- (b) with the consent of the Supervisor, from receiving money—
 - (i) pursuant to the powers conferred under section 26 ;
 - (ii) from a banking or finance company; or
 - (iii) from an officer of the company.

(3) The Supervisor may and, if so required to do so by the Minister, shall revoke a direction under subsection (1) and on so doing shall notify the loan fund company concerned in writing that the direction has been revoked.

(4) The Supervisor may at any time vary a direction under subsection (1) by notice in writing served on the loan fund company concerned.

(5) A loan fund company shall, while a direction under subsection (1) remains in force in respect of the company, comply with the direction.

Penalty : \$1,000 and, in the case of a continuing offence, a further penalty of \$100 for each day during which the offence continues.

Loan Fund Companies.

60. (1) Subject to this Division and with the approval of the Minister, the Supervisor may, by instrument in writing, appoint an administrator to administer the affairs and activities of a loan fund company if—

Appointment
and powers
of adminis-
trator.

- (a) the company has suspended business for a period of more than 2 months;
- (b) after being notified by the Supervisor of any contravention of or failure to comply with a provision of this Act or of the Companies Act, 1961, that is applicable to it, the company has failed to remedy the contravention to the extent that it is capable of remedy, or has committed a further contravention of the provision or the failure to comply has continued; or
- (c) following an inquiry into the affairs of the company under Division 2 or following an investigation under Part VIA of the Companies Act, 1961, the Supervisor is of the opinion that, in the interests of—
 - (i) members;
 - (ii) holders of options to acquire loan entitlement shares in the company; or
 - (iii) creditors of the company,

an administrator ought to be appointed to conduct the affairs and activities of the company.

(2) On the appointment of an administrator under subsection (1), the Supervisor shall serve on the loan fund company a copy of the instrument of the appointment and thereupon—

- (a) the affairs and activities of the company shall be administered by the administrator until his appointment is terminated under this Division;

(b)

Loan Fund Companies.

- (b) the administrator shall assume and be responsible for the management of the company and shall perform all of the duties and may perform any of the functions and exercise any of the powers of the directors of the company;
- (c) the directors of the company shall cease to hold office;
- (d) any delegation made by the directors shall cease to have effect; and
- (e) unless the administrator otherwise determines within 3 days after the service on the company of the copy of the instrument of his appointment, either generally or with respect to any particular contract or contracts, all contracts of service and for the performance of services entered into by or on behalf of the company shall terminate at the expiration of that period.

(3) Subject to this Division, an administrator appointed under this section—

- (a) shall, as soon as practicable after his appointment as such, take into his custody or under his control all the property and things in action to which the loan fund company is or appears to be entitled; and
- (b) shall, subject to and in accordance with any direction given to him by the Supervisor, conduct the affairs and activities of the company in such manner as he thinks most economical and most beneficial to the interests of the members and creditors of the company and of holders of options to acquire loan entitlement shares in the company.

(4) While an administrator of a loan fund company holds office as such, he shall be chairman of any meeting or adjourned meeting of the company.

(5)

Loan Fund Companies.

(5) Except as provided under section 61, a person shall not be appointed as a director of the company while an administrator of the company holds office as such.

(6) An administrator of a loan fund company shall be deemed to have vacated his office if—

- (a) he dies;
- (b) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration as administrator, or of his estate, for their benefit;
- (c) he becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;
- (d) he is convicted in New South Wales of a crime or an offence punishable by imprisonment for 12 months or more, or he is convicted elsewhere than in New South Wales of a crime or an offence which, if committed in New South Wales, would be a crime or an offence so punishable;
- (e) he resigns his office by writing under his hand addressed to the Supervisor; or
- (f) his appointment is revoked by the Supervisor under subsection (7).

(7) The Supervisor may, and, if required to do so by the Minister, shall, revoke the appointment of an administrator appointed under this section.

(8)

Loan Fund Companies.

(8) Where the office of administrator of a loan fund company is deemed to have been vacated under subsection (6), the Supervisor, by instrument in writing, shall, unless before the occurrence of the vacancy directors have been appointed at a general meeting of the company called under section 61, appoint another person to fill the vacancy.

(9) Notwithstanding the appointment of an administrator of a loan fund company under this section and for so long as the administrator holds office, the provisions of the Companies Act, 1961, relating to the appointment and re-appointment of auditors and the rights and duties of auditors shall continue to apply to and in relation to the company, and in the application of those provisions to and in relation to the company any reference in those provisions to the directors of the company shall be construed as a reference to the administrator of the company.

Holding
of meeting
for appoint-
ment of
directors.

61. (1) The Supervisor may, at any time while an administrator of a loan fund company is holding office as such, give to the administrator a direction requiring him to call a general meeting of the company for the purpose of appointing new directors of the company.

(2) Where a direction has been given under subsection (1) to the administrator of a loan fund company, the administrator shall call a meeting of the company by notice in writing given not less than 14 days before the meeting or, where the articles of association of the company provide for more than 14 days' notice for the calling of extraordinary general meetings, by notice in writing given as if the meeting were an extraordinary general meeting.

(3) A meeting called under subsection (2) shall, notwithstanding that it is called by notice shorter than is required by that subsection, be deemed to be duly called if

it

Loan Fund Companies.

it is so agreed by a majority in number of the persons having a right to attend and vote at meetings of the loan fund company.

(4) So far as the articles of association of the loan fund company do not make other provision in that behalf, notice of a meeting called under subsection (2) shall be served on every person having a right to vote at general meetings of the company in the manner in which notices are required to be served by Table A of the Fourth Schedule to the Companies Act, 1961.

(5) The accidental omission to give notice of a meeting called under subsection (2) to, or the non-receipt of notice of a meeting by, any person shall not invalidate proceedings at the meeting.

(6) The persons present at a meeting called under subsection (2) and having a right to vote at that meeting shall appoint directors of the loan fund company and immediately at the conclusion of that meeting the appointment of the administrator shall cease and the directors so appointed shall take office.

62. (1) The expenses of and incidental to the administration of the affairs and activities of a loan fund company by an administrator appointed under section 60 are payable by the company. Expenses of administration.

(2) The remuneration of an administrator of a loan fund company who is not a servant of the Crown is an expense referred to in subsection (1) and shall be fixed by the Minister.

(3)

Loan Fund Companies.

(3) Where an administrator of a loan fund company is a servant of the Crown, the reimbursement of the Crown of an amount certified by the Supervisor in respect of the remuneration of that servant is an expense referred to in subsection (1) and is recoverable from the company in a court of competent jurisdiction as a debt due to the Crown.

Liability for losses incurred during administration.

63. (1) An administrator of a loan fund company is not liable for any loss incurred by that company during his term of office unless the loss was attributable to—

- (a) his wilful misconduct;
- (b) his gross negligence; or
- (c) his wilful failure to comply with any provision of this Act or the regulations, or of the articles of association of the company so far as those articles are applicable to the directors or the board of directors of the company.

(2) Neither the Crown, the Minister nor the Supervisor is liable for any loss incurred by a loan fund company during the term of office of an administrator, whether or not the administrator is so liable.

Right of appeal against direction under section 59 and against appointment of administrator.

64. (1) Where—

- (a) notice of a direction has been served on a loan fund company in accordance with section 59 (1); or
- (b) a copy of an instrument appointing an administrator of a loan fund company has been served on the company in accordance with section 60 (2),

the

Loan Fund Companies.

the company where paragraph (a) applies, or a majority of the directors who have ceased to hold office where paragraph (b) applies, may, not later than 28 days after the date on which the notice or copy of the instrument of appointment was served on the company, or within such extended period as the Court may allow, appeal to the Court against the direction or appointment, as the case may be.

(2) Any such appeal shall be made in accordance with rules made under the Supreme Court Act, 1970, with the Supervisor joined as a party.

(3) On the hearing of the appeal, the Court may—

- (a) in the case of an appeal against a direction under **section 59 (1)**, make an order confirming the direction if it is satisfied that the direction is in the interests of persons who may become members of, or who may be granted options to acquire loan **entitlement shares in**, or who may deposit with or **otherwise lend money to**, the loan fund company; **or**
- (b) in the case of an appeal against an appointment **of an administrator under section 60 (1)**, make an order confirming the appointment of the administrator if it is satisfied that the appointment is in the interests of any of the members or creditors of, or holders of options to acquire loan entitlement shares in, the loan fund company,

but if it is not so satisfied, it may make an order revoking the direction or appointment.

(4) An order under subsection (3) revoking the appointment of an administrator of a loan fund company does not take effect until the directors have resumed the management and control of the company in accordance with directions given under subsection (6).

(5)

Loan Fund Companies.

(5) Where the Court makes an order under subsection (3), it may make such other ancillary order or orders as it considers appropriate having regard to the circumstances of the case.

(6) Where the Court makes an order under subsection (3) revoking the appointment of an administrator of a loan fund company, it may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who, immediately before the appointment of the administrator, were directors of the company.

(7) An order made under subsection (3) revoking a direction under section 59 (1), or the appointment of an administrator under section 60 (1), does not affect the validity or effect of the direction or appointment or, in the case of the appointment of an administrator, any thing done or omitted by the administrator in the exercise or performance of his powers, authorities, duties or functions as such before the order takes effect.

PART VII.

MISCELLANEOUS PROVISIONS.

DIVISION 1.—*Proceedings.*

Offence to obstruct Supervisor, etc.

65. Any person who—

- (a) refuses or intentionally delays the admission to any place of the Supervisor or an inspector in the exercise by him of his powers under this Act;
- (b) intentionally obstructs the Supervisor or an inspector in the exercise by him of any such power;

(c)

Loan Fund Companies.

- (c) fails to comply with a request of the Supervisor or an inspector made under any such power; or
- (d) conceals any person from the Supervisor or an inspector or prevents any person from appearing before or being examined by the Supervisor or an inspector or attempts so to conceal or prevent any person,

is guilty of an offence and is liable on conviction to a penalty not exceeding \$500.

66. Proceedings for an offence against this Act or the regulations— Proceedings for offences.

- (a) shall be disposed of summarily before a court of petty sessions constituted by a stipendiary magistrate sitting alone or 2 justices; and
- (b) may be commenced within 3 years after the date on which the offence is alleged to have been committed.

67. (1) Subject to this section, where a loan fund company contravenes or fails to comply with a provision of this Act that is applicable to it and any officer of the company has— Offences by officers of loan fund companies.

- (a) failed to take all reasonable steps within his power to prevent the contravention or to secure the compliance by the company with the provision; or
- (b) connived at or, by his own intentional act, either by himself or together with others, been the cause of that contravention or failure to comply,

that officer is guilty of an offence and is liable on conviction to a penalty not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months, or to both.

(2)

Loan Fund Companies.

(2) If an offence under subsection (1) is committed with intent to deceive or defraud members or creditors of the loan fund company, or persons holding options to acquire loan entitlement shares in the company, or for a fraudulent purpose, the offender is liable on conviction to a penalty not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months, or to both.

(3) A person shall not be sentenced to imprisonment for an offence against subsection (1) (a) unless, in the opinion of the court, the offence was committed intentionally.

(4) Proceedings for an offence against subsection (1) may be taken against an officer of a loan fund company whether or not proceedings are taken against the company with respect to the contravention or failure to comply referred to in that subsection.

Evidence. **68.** (1) In any proceedings before a court a copy of, or an extract from, a return or other document lodged with the Supervisor under this Act and purporting to be signed by him and to be certified by him as such shall be admissible in evidence and, until the contrary is proved, be evidence of the contents of the return or document or, as the case may be, of the part extracted therefrom.

(2) Judicial notice shall be taken of the signature and of the seal of any person who holds or has held office as Supervisor or Deputy Supervisor and of the signature of a person to whom any duty, power or authority has been delegated under section 8.

DIVISION 2.—*Other Matters.*

Report to Parliament. **69.** (1) The Supervisor shall, as soon as practicable after 30th June in each year, prepare and submit to the Minister a report with respect to the operation of, and his activities under, this Act during the period of 12 months ending on that date.

(2)

Loan Fund Companies.

(2) The Minister shall cause the report or a copy of it to be laid before both Houses of Parliament as soon as practicable after the receipt by him of the report.

70. The Supervisor shall, on being requested to do so by any person attending his office during the ordinary business hours of that office and on the payment by that person of the prescribed fee (if any), make available for inspection any return or document lodged with him under section 23 and, where the person so requires, shall provide that person with a copy of any such return or document, or of such part of the return or document as the person specifies, certified under his hand and seal. Inspection
of docu-
ments, etc.

71. (1) The Governor may make regulations, not in- Regulations.
consistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to—

- (a) forms required for the purposes of this Act;
- (b) fees for any matter or thing done or to be done by or on behalf of the Supervisor under this Act;
- (c) maximum amounts chargeable by loan fund companies by way of fees in respect of any matters specified in the regulations;
- (d) maximum amounts which loan fund companies may impose on their members, and on holders of options to acquire loan entitlement shares in those companies, as penalties in respect of any matters specified in the regulations;

(e)

Loan Fund Companies.

- (e) the form and manner in which loan fund companies are required to keep their registers of loan priority numbers and of forfeitures and surrenders under this Act ;
- (f) the times and places at which general meetings of loan fund companies are required to be, or are permitted to be, held ;
- (g) the manner in which voting on resolutions put to, and the election of officers and other business transacted at, general meetings of loan fund companies is required to be, or is permitted to be, conducted; and
- (h) prohibiting or regulating the forfeiture of loan entitlement shares in a loan fund company—
 - (i) for any reason other than the non-payment of calls or instalments due in respect of the shares; or
 - (ii) in respect of which the company has made a loan or the holder has a vested loan entitlement.

(2) Regulations under subsection (1) may be made so as to apply differently according to such factors as may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

(3) Regulations under subsection (1) may prescribe offences for any contravention of or failure to comply with any of the regulations and may impose a penalty in respect of any such offence not exceeding \$500 and, in the case of a continuing offence, a further penalty not exceeding \$10 for each day during which the offence continues.

Loan Fund Companies.

72. (1) In its application to a loan fund company, the Companies Act, 1961, shall be read as if—

Special provisions with respect to winding up of loan fund companies.

- (a) after section 221 (1), the following subsection had been inserted :—

(1A) Without prejudice to the application of subsection (1) to a loan fund company within the meaning of the **Loan Fund Companies Act, 1976**, such a company may be wound up under an order of the Court on the application of the Supervisor of Loan Fund Companies or on the application of the Supervisor of Loan Fund Companies and one or more of the parties specified in that subsection.

- (b) the word “or” had been omitted from section 222 (1) (g) (ii) where lastly occurring;

- (c) the words “wound up.” had been omitted from section 222 (1) (h) and the words “wound up; or” had been inserted instead;

- (d) after section 222 (1) (h), the following paragraph had been inserted :—

(i) in the case of a loan fund company within the meaning of the **Loan Fund Companies Act, 1976**—

- (i) the company has failed to lodge with the Supervisor of Loan Fund Companies any return or document required to be lodged with him under section 23, or to comply with a notice served on the company under section 24, of that Act;

(ii)

Loan Fund Companies.

- (ii) the company, if formed after the date of assent to that Act, does not, at the date of the making of the application to the Court to wind up the company, have assets (less current liabilities), valued at their current market value, of \$5,000,000 or more; or
 - (iii) the Supervisor of Loan Fund Companies has, after holding an inquiry under Division 2 of Part VI of that Act, reported that he is of the opinion that the company cannot pay its debts and should be wound up, or that it is in the interests of the public or of the shareholders or of the creditors of the company or of persons who hold options to acquire loan entitlement shares in the company that the company should be wound up.
- (e) after the words "Securities Industry Act, 1975," in section 292 (1) (f), the words "or pursuant to a direction given under section 55 (2) of the Loan Fund Companies Act, 1976," had been inserted;
- (f) after the words "wound up," in section 292 (1A), the words "or a direction given under section 55 (2) of the Loan Fund Companies Act, 1976, is served on a loan fund company that is being wound up," had been inserted;

(g)

Loan Fund Companies.

- (g) after the words "the order" in section 292 (1A), the words "or, as the case may be, the service of the direction" had been inserted;

- (h) the words "wound up." had been omitted from section 315 (1) (c) (iii) and the words "wound up; or" had been inserted instead; and

- (i) after section 315 (1) (c) (iii), the following subparagraph had been inserted :—
 - (iv) if the company is operating, or managing, controlling or promoting the operation of, a loan fund scheme in contravention of section 12 of the Loan Fund Companies Act, 1976.

(2) If, on the winding up of a loan fund company, any surplus remains after all claims of creditors, both secured and unsecured, have been satisfied or provided for, other than claims of holders of shares in the company, and of options to acquire shares in the company, in relation to amounts paid up, or credited as paid up, in respect of those shares and options, the following provisions shall apply :—

- (a) the holders of shares, and of options to acquire loan entitlement shares, in the company shall, subject to subsections (3) and (4), be entitled to be repaid all amounts paid up, or credited as paid up, by them respectively in respect of those shares and options; and

(b)

Loan Fund Companies.

(b) if, after making the repayments under paragraph (a), any part of the surplus remains, that part shall, subject to subsection (5), be distributed among the holders of shares, other than qualifying shares, in the company in proportion to the amounts paid up, or credited as paid up, by them respectively in respect of those shares.

(3) The holder of shares in a loan fund company, or of an option to acquire loan entitlement shares in a loan fund company, who, at the time repayments are to be made under subsection (2) (a), is in arrear in making payment of any call or instalment due in respect of those shares or, as the case may be, that option shall not be entitled to any repayment under subsection (2) (a).

(4) The amounts referred to in subsection (2) (a) shall rank equally between themselves and shall be paid in full, unless the surplus is insufficient to satisfy them, in which case they shall abate in equal proportions between themselves.

(5) The holder of shares in a loan fund company who, at the time a distribution is made under subsection (2) (b), is in arrear in making payment of any call or instalment due in respect of those shares shall not be entitled to participate in that distribution.

(6) Subsections (2) to (5) shall apply on the winding up of a loan fund company notwithstanding anything in the Companies Act, 1961, to the contrary.

(7) A reference in subsection (2) to an amount paid up, or credited as paid up, in respect of shares or options to acquire loan entitlement shares includes any premium paid, or credited as paid, in respect of those shares or options.

SCHEDULE

Loan Fund Companies.

SCHEDULE 1.

Sec. 34.

PART I.

NOTICE TO PURCHASER—RIGHT OF CANCELLATION.

1. You have for a short period a legal right to cancel the contract that you entered into with * for the acquisition of
† on the † day of ,
19 .

2. You can cancel the contract by giving notice to the company at § before the end of the period of 1 month after the day on which you entered into the contract.

3. You can give the notice by posting it in a prepaid letter, or by delivering it, to the company at the address shown in paragraph 2 of this notice.

4. If you exercise your right to cancel the contract within the period referred to in paragraph 2 of this notice, any money you have paid under the contract is repayable and must be refunded to you.

5. ¶(a) The company does not give any undertaking as to the period within which you will, should you eventually become a member of the company, receive a loan from the company.

¶(b) The company undertakes that you will be entitled to a loan from the company of the amount specified in paragraph 9 of this notice not later than the † day of ,
19 .

¶ 6. The amount that you are required to pay is \$ on or before the day of each month. That amount is made up of \$ in respect of , \$ in respect of and \$ in respect of .

7. If you do not exercise your right to cancel the contract, any money that you have paid under the contract will be repayable to you or your representative only in the circumstances mentioned in paragraph 8 of this notice.

8. If you forfeit or surrender shares allotted to you, or an option granted to you to acquire shares, you must not expect to be repaid the whole of the amount that you have paid for the shares or option and the company is not, unless any provision of the memorandum or articles of association of the company or the prospectus relating to those shares or that option obliges it to do so, obliged by the Loan Fund Companies Act, 1976, to make repayment of any amount due

SCHEDULE

Loan Fund Companies.

SCHEDULE 1—*continued.*PART I—*continued.*NOTICE TO PURCHASER—RIGHT OF CANCELLATION—*continued.*

to you in respect of the shares or option until the expiration of 3 years from the date on which the shares were, or the option was, forfeited or surrendered, although the company may make the repayment within that period if it so wishes.

** 9. The maximum amount of loan that you may receive from the company is \$ _____ and you would be required to provide as security for that loan the following:—

10. You are reminded that your application is subject to the terms of the prospectus dated the † _____ day of _____, 19 _____, that has been given to you and you are advised to read that prospectus.

* The name of the loan fund company concerned to be inserted.

† Particulars of the number and nominal value of shares to be allotted or, as the case may be, to which the option relates to be inserted.

‡ Particulars of relevant date to be inserted.

§ The address of the loan fund company concerned to be inserted.

|| Subparagraph (a) or subparagraph (b), whichever is inapplicable, to be deleted.

¶ Total amounts, payment intervals and composition of amount payable to be inserted.

** Particulars of amount and nature of security that would be required to be inserted.

 PART II.

REQUIREMENTS AS TO STATUTORY STATEMENT.

1. The statement set out in Part I of this Schedule shall appear on the contract on the page which contains particulars of the shares or option that are or is the subject of the contract.

SCHEDULE

Loan Fund Companies.

SCHEDULE 1—*continued.*

PART II—*continued.*

REQUIREMENTS AS TO STATUTORY STATEMENT—*continued.*

2. In the statement—
 - (a) the lettering shall be roman or upright sanserif; and
 - (b) the height of the smallest letter shall be not less than 3 millimetres.

3. The requirement referred to in paragraph 2 (a) does not apply to any part of the statement which consists of handwriting.

4. The words “NOTICE TO PURCHASER—RIGHT OF CANCELLATION,” shall be in bold capital letters not less than 10 millimetres in height, but, except for those words, the initial letters of other words and any part of the statement which consists of handwriting, lettering in the statement shall not be in capital letters.

5. The statement shall be legible and shall be capable of being easily read by a person with normal vision.

6. Except in the case of particulars required to be inserted in the statement, the contents of the statement shall not consist of handwriting or a reproduction of handwriting.

Loan Fund Companies.

Secs. 34, 35.

SCHEDULE 2.

NOTICE OF CANCELLATION.

To *

I hereby cancel the contract entered into by me on the day of _____, 19____, to acquire † _____ in the company and require you to repay to me all money paid by me under the contract.

Dated this _____ day of _____, 19____.

Signed

Address
.....
.....

NOTE: This notice may be given by posting it in a prepaid letter or by delivering it personally to the loan fund company concerned at the address shown in the contract before the end of the period of 1 month beginning with the day after the day on which you signed the contract. If you post this notice you are recommended to send it by certified mail so that you obtain proof of the giving of the notice.

* Insert name and address of the loan fund company concerned.

† Insert concise particulars of the shares or option to acquire shares to which the contract relates.

