

Loan Fund Companies Act 1976 No 94

[1976-94]



New South Wales

Status Information

Currency of version

Current version for 15 July 2015 to date (accessed 21 May 2024 at 5:51)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Responsible Minister

- Minister for Finance

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 July 2021

Loan Fund Companies Act 1976 No 94



New South Wales

Contents

Long title	6
Part 1 Preliminary	6
1 Name of Act	6
2 Commencement	6
3 (Repealed)	6
4 Definitions	6
Part 2 Administration	10
5 Supervisor	10
6 Deputy Supervisor	10
7 Inspectors	10
8 Delegation	11
9–11 (Repealed)	11
Part 3 Conduct of loan fund schemes	12
12 Operation etc of loan fund schemes prohibited except by certain persons	12
13 Restrictions on use of certain descriptions	12
Part 4 Management and operation of loan fund companies	13
Division 1 Power to declare public companies etc to be loan fund companies	13
14 Power of Minister to declare public company etc to be a loan fund company subject to this Act....	13

Division 2 Obligations etc of loan fund companies	14
15 Certain persons prohibited from managing etc affairs or activities of loan fund company.....	14
16 Loan fund company not to discriminate against or in favour of persons	16
17 Allocation of loan priority numbers.....	17
18 Register of loan priority numbers	19
19 Offers of loans to holders of loan entitlement shares in loan fund companies	20
20 Loan fund company to publish certain information	22
21 Register of option holders.....	23
22 Additional requirements with respect to register of members.....	25
23 Returns	26
24 Loan fund company etc to provide information in certain cases	28
25 Powers of company with respect to fees and penalties	29
Division 3 Provisions relating to funds of loan fund companies	30
26 Borrowing powers of loan fund company.....	30
27 Investment of surplus funds	31
28 (Repealed)	31
Division 4 Other provisions relating to operation of loan fund companies	31
29 Loan fund company not to represent or indicate that it has special status	31
30 Liens over options and shares	32
31 Certain provisions of memorandum or articles of association of loan fund company void.....	32
Part 5 Rights with respect to shares and options to acquire shares in loan fund companies	32
Division 1 Rights of persons acquiring shares and options	32
32 Interpretation for the purposes of this Division	32
33 Enforcement of contracts with respect to allotment etc of shares in loan fund company conditional on compliance with certain requirements	32
34 Requirements as to contracts	33
35 Right of cancellation.....	34

36 Effect of cancellation	34
37 No contracting out.....	35
38 Offence for loan fund company to fail to repay money	35

Division 2 Rights of shareholders and optionholders to attend and vote at meetings

.....	35
39 Voting rights attaching to options and shares and rights of holders thereof to attend and vote at general meetings of a loan fund company	35

Division 3 Transmission and transfer of shares and options.....

40 Rights of transferees etc of shares and options.....	38
---	----

Division 4 Forfeiture or surrender of shares and options.....

41 Application of Division	38
42 Forfeiture of options and shares	38
43 Surrender of options and shares.....	39
44 Money from forfeited or surrendered options or shares to be transferred to a reserve	40
45 Register of forfeitures and surrenders to be kept	41
46 Payment of amounts by loan fund company in respect of forfeited or surrendered options and shares etc	42
47 Cancellation of options and shares.....	45
47A Distribution of surplus funds	45

Part 6 Special powers with respect to the supervision of loan fund companies

.....	46
-------	----

Division 1 Inspections

48 Powers of inspection.....	46
------------------------------	----

Division 2 Inquiries

49 Interpretation for the purposes of this Division	47
50 Power to hold inquiry.....	47
51 Procedure with respect to holding of inquiry	48

52 Report of Supervisor	50
53 Further powers of Supervisor after inquiry	51
54 Privileged communications	51
55 Expenses of inquiry	51
56 Concealing etc of records	52

Division 3 Powers to control prospectuses and advertising, to suspend acceptances of money and to appoint administrators

.....	52
57 Powers of Supervisor with respect to prospectuses	53
58 Powers with respect to advertising	53
59 Power to suspend the acceptance of money by loan fund companies	55
60 Appointment and powers of administrator	55
61 Holding of meeting for appointment of directors	58
62 Expenses of administration	58
63 Liability for losses incurred during administration	59
64 Right of appeal against direction under section 59 and against appointment of administrator	59

Part 7 Miscellaneous provisions 60

Division 1 Proceedings..... 60

65 Offence to obstruct Supervisor etc	60
66 Proceedings for offences	61
67 Liability of directors etc for offences by corporation—accessory to the commission of the offences	61
68 Evidence	62

Division 2 Other matters 62

69 Report to Parliament.....	62
70 Inspection of documents etc	62
71 Regulations.....	63
72 Special provisions with respect to winding up of loan fund companies	64

Schedule 1..... 66

Schedule 2 Notice of cancellation 67

Loan Fund Companies Act 1976 No 94



New South Wales

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.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Loan Fund Companies Act 1976*.

2 Commencement

- (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.

3 (Repealed)

4 Definitions

- (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 29 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 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 bank, building society or credit union,
- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a bank, building society or credit union, and
- (c) securities or documents of title to securities in the possession or under the control of a bank, building society or credit union whether by way of pledge or otherwise.

Court means the Supreme Court of New South Wales.

Deputy Supervisor means the Deputy Supervisor of Loan Fund Companies under this Act.

executive officer, in relation to a loan fund company, means any person, by whatever name called and whether or not the person is a director of a company, who is concerned, or takes part, in the management of the company.

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 has the meaning ascribed to that expression by section 5 (1) of the [Companies \(New South Wales\) Code](#).

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, 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) a director, secretary, executive officer or employee of the company,
- (b) a receiver and manager of the property or any part of the property of the company appointed under a power contained in an instrument,
- (c) an official manager or deputy official manager of the company,
- (d) a liquidator of the company appointed in a voluntary winding up of the company, and
- (e) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons,

but does not include:

- (f) a receiver who is not also a manager,
- (g) a receiver and manager appointed by a court,
- (h) a liquidator appointed by a court, or
- (i) 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, 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 (New South Wales) Code*.

public company has the meaning ascribed to that expression by section 5 (1) of the *Companies (New South Wales) Code*.

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 the expression “recognized company” by section 5 (1) of the *Companies (New South Wales) Code*.

recognised foreign company has the meaning ascribed to the expression “recognized foreign company” by section 5 (1) of the *Companies (New South Wales) Code*.

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 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 the holder such a loan, being an offer which is attributable to the holding of those shares, and
 - (ii) the holder 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 a reference to an invitation to apply for a

loan, and

- (c) a reference to the acceptance of an offer of a loan includes a reference to the making of an application for a loan in response to an invitation to make such an application.

Part 2 Administration

5 Supervisor

- (1) The Supervisor is the person employed in the Public Service as the Supervisor of Loan Fund Companies.
- (2) (Repealed)
- (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 Deputy Supervisor

- (1) The duties, powers and authorities of the Supervisor may be performed and exercised by the person employed in the Public Service as the Deputy Supervisor of Loan Fund Companies.
- (2) The Deputy Supervisor shall exercise the Deputy Supervisor's 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) 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 the Deputy Supervisor's 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.

7 Inspectors

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

- (2) A person appointed as an inspector under section 492 of the *Co-operatives National Law (NSW)* 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 the inspector's authority as an inspector.
- (4) An inspector, on exercising in any place a power conferred on the inspector 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 the inspector's 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.

8 Delegation

- (1) The Supervisor may, by instrument in writing, delegate such of the Supervisor's 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 the Supervisor's 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.

9-11 (Repealed)

Part 3 Conduct of loan fund schemes

12 Operation etc of loan fund schemes prohibited except by certain persons

- (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 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.

Maximum penalty: 20 penalty units and, in the case of a continuing offence, a further penalty not exceeding 2 penalty units 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).

Editorial note—

For declaration under this subsection, see Gazette No 11 of 4.2.1977, p 424. From April 2021, PCO is no longer updating notes in provisions of in force titles about related gazette notices. To search for related gazette notices, please use the Gazette Search functionality.

- (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, the person is acting in the capacity of officer or employee of a person mentioned in subsection (1) (a) or (b).

13 Restrictions on use of certain descriptions

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

- (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) 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.

Maximum penalty: 10 penalty units and, in the case of a continuing offence, a further penalty not exceeding 1 penalty unit for each day during which the offence continues.

Part 4 Management and operation of loan fund companies

Division 1 Power to declare public companies etc to be loan fund companies

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

- (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) Where:
 - (a) a loan fund company, being a company within the meaning of the *Companies (New South Wales) Code* has been wound up under Part XII of that Code or the registration of that company has been cancelled under section 459 of that Code,
 - (b) a loan fund company, being a recognised company:
 - (i) lodges with the National Companies and Securities Commission a notice under the provisions of the law of the State or Territory where it is incorporated that correspond with section 503 of that Code, 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 or Territory where it is incorporated,
 - (c) a loan fund company, being a recognised foreign company:
 - (i) lodges with the National Companies and Securities Commission a notice under the provisions of the law of the State or Territory where it is incorporated that correspond with section 503 of that Code, 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 registration as a foreign company in a State or Territory cancelled under the provisions of the law of the State or Territory that correspond with

Division 5 of Part XIII of that Code, or

- (d) a loan fund company, being a foreign company (other than a recognised foreign company):
 - (i) lodges with the National Companies and Securities Commission a notice under section 518 of that Code 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, pursuant to section 518 of that Code,

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

Division 2 Obligations etc of loan fund companies

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

- (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 10 penalty units, and, in the case of a continuing offence, to a further penalty not exceeding 1 penalty unit 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 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,
 - (b) the company shall be deemed to be subrogated to all the rights and remedies of that first mentioned person in the person's 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.

Maximum penalty: 10 penalty units.

(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.

Maximum penalty: 20 penalty units 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 Loan fund company not to discriminate against or in favour of persons

Subject to sections 17 and 19, a loan fund company shall not:

(a) discriminate against or in favour of a person:

- (i) by granting to the person an option to acquire loan entitlement shares in the company,
- (ii) by allotting to the person qualifying shares in the company, or
- (iii) by allotting to the person 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 the holder by making or offering the loan on terms and conditions less favourable, or
- (ii) discriminate in the holder's 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.

Maximum penalty: 10 penalty units.

17 Allocation of loan priority numbers

(1) A loan fund company shall:

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

(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 the holder 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 the holder.

(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 5 penalty units.

18 Register of loan priority numbers

(1) A loan fund company:

(a) shall:

- (i) if it is a company within the meaning of the *Companies (New South Wales) Code*, keep at the place at which the register of members is kept,
- (ii) if it is a recognised company or a foreign company and keeps a branch register in New South Wales of members who are resident in New South Wales, keep at the place where that branch register is kept, or
- (iii) if it is a recognised company or a foreign company to which subparagraph (ii) does not apply, keep at its principal or registered office in New South Wales, a register of loan priority numbers, and

(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 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 keeps a branch register in New South Wales of members who are resident in New South Wales, that register 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 5 penalty units and, in the case of a continuing failure to comply with subsection (1) (a), to a further penalty not exceeding 0.5 penalty unit for each day during which the offence continues.

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

- (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.
- (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) 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 the holder at the holder's 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 the holder is not for the time being in arrear with the payment of calls or instalments and in respect of which the holder has paid all penalties and other amounts (if any) that are for the time being due) advising the holder that, if the holder does not acquire the loan entitlement shares to which the holder's option relates or, as the case may be, the holder's 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 the holder's option relates or the holder's 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 the holder refuses the offer, or fails or is unable to comply with the terms and conditions or any of the terms or conditions on which the 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 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 the holder 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 5 penalty units.

20 Loan fund company to publish certain information

- (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:
- (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) 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.

Maximum penalty: 5 penalty units.

21 Register of option holders

- (1) Subject to this section, a loan fund company which is a company within the meaning of the *Companies (New South Wales) Code* 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 the person is the holder:
 - (a) the person's name and address,
 - (b) the date on which the person's option was or is deemed to have been granted and the date by which it is required to be exercised,
 - (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 the person subsequently acquires the shares pursuant to that option, such particulars (if any) of the acquisition, or if the person 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 the person 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) shall:

- (i) if the company is incorporated under the *Companies (New South Wales) Code*, be kept at the place at which the register of members is kept,
- (ii) if the company is a recognised company or a foreign company and keeps a branch register in New South Wales of members who are resident in New South Wales, be kept at the place where that branch register is kept, or
- (iii) if the company is a recognised company or a foreign company to which subparagraph (ii) does not apply, be kept at its principal or registered office in New South Wales, and

(b) shall be kept in the manner prescribed by Division 4 of Part V of the *Companies (New South Wales) Code* as if the register were a register of members referred to in section 256 of that Code,

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 256, 257 and 547 of the *Companies (New South Wales) Code* 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 of a company which keeps a branch register in New South Wales of members who are resident in New South Wales, to those members and to the branch register of those members.

(6) Sections 183, 184, 185 (1) and 259 of the *Companies (New South Wales) Code* 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 keeps a branch register in New South Wales of members who are resident in New South Wales, to the transfer of shares of those

members 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 2 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 0.5 penalty unit for each day during which the offence continues.
- (10) Nothing in this section affects the operation of section 131 of the *Companies (New South Wales) Code*.

22 Additional requirements with respect to register of members

- (1) A loan fund company which is a company within the meaning of the *Companies (New South Wales) Code* shall, within the period specified in subsection (3), enter in the register of members kept pursuant to section 256 of that Code:
 - (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 the member 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 the member 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) A loan fund company which, pursuant to section 262 or, as the case may be, section 521 of the *Companies (New South Wales) Code*, keeps a branch register in New South Wales of members who are resident in New South Wales, within the period specified in subsection (3), enter in that branch register:

(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).

Maximum penalty: 2 penalty units and, in the case of a continuing offence, a further penalty not exceeding 0.5 penalty unit 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 the person becomes a member.

23 Returns

(1) A loan fund company shall:

(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) 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 within the meaning of the *Companies (New South Wales) Code*, 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 the branch register (if any) 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 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 principal executive officer or secretary of the company as are required by section 238 of the *Companies (New South Wales) Code* to be contained in the register of directors, principal executive officers 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 (New South Wales) Code*,
 - (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, building society and credit union 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 principal executive officer or secretary, of the loan fund company to be a true copy of all accounts relating to the company required by section 269 of the *Companies (New South Wales) Code*, 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 the company which would be required by that section if the company were a public company incorporated under the *Companies (New South Wales) Code*,
 - (b) a copy of the statements required by section 269 of the *Companies (New South*

Wales) Code 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 (New South Wales) Code*,

- (c) a copy of the auditor's report or reports required to be made by section 285 of the *Companies (New South Wales) Code* 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 (New South Wales) Code*,
 - (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.

Maximum penalty: 2 penalty units and, in the case of a continuing offence, a further penalty not exceeding 0.5 penalty unit for each day during which the offence continues.

24 Loan fund company etc to provide information in certain cases

- (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 the Supervisor, within such period as is specified in the notice:
- (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.

Maximum penalty: 5 penalty units.

(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 the person, 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.

25 Powers of company with respect to fees and penalties

(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 0.1 penalty unit, 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 the member or person 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) 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.

Maximum penalty: 2 penalty units.

(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 Borrowing powers of loan fund company

- (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 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.

Maximum penalty: 10 penalty units.

- (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.

Maximum penalty: 2 penalty units.

- (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.

27 Investment of surplus funds

- (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) A loan fund company shall not invest any of the funds of the company referred to in subsection (1):
 - (a) in securities, by way of 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.

Maximum penalty: 10 penalty units.

- (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 (Repealed)

Division 4 Other provisions relating to operation of loan fund companies

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

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.

Maximum penalty: 10 penalty units.

30 Liens over options and shares

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.

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

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 5 Rights with respect to shares and options to acquire shares in loan fund companies

Division 1 Rights of persons acquiring shares and options

32 Interpretation for the purposes of this Division

- (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.
- (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 the officer's capacity as such, holds himself or herself out as being a representative of the company.

33 Enforcement of contracts with respect to allotment etc of shares in loan fund company conditional on compliance with certain requirements

- (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.
- (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) 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.

34 Requirements as to contracts

(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 1 of Schedule 1 which statement shall comply with Part 2 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) 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 Right of cancellation

- (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.
- (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) 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.

36 Effect of cancellation

- (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) 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 the person's full costs, fees and other reasonable expenses, including reasonable costs incurred between solicitor and client.

37 No contracting out

- (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.
- (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 Offence for loan fund company to fail to repay money

- (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 5 penalty units.
- (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 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

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

- (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 (New South Wales) Code* 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) 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 (New South Wales) Code* to the contrary, be entitled:

- (e) to be given, subject to the provisions of the *Companies (New South Wales) Code* 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) in the case of a resolution so put in respect of which a poll is taken, to exercise the voting right conferred on the holder 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 the holder by paragraphs (f) and (g), notwithstanding that all calls, instalments or other sums presently due and payable by the holder in respect of the option or shares held by the holder may not have been paid.

(3) Division 3 of Part V of the *Companies (New South Wales) Code* 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 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) 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

40 Rights of transferees etc of shares and options

- (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

41 Application of Division

The provisions of this Division have effect notwithstanding section 123 of the *Companies (New South Wales) Code* or any other law.

42 Forfeiture of options and shares

- (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 entitlement shares in a loan fund company, not being shares in respect of which the company has made a loan for which any liability to the company is outstanding,

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 the holder 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 the holder 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) 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 the person 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 the person 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.

43 Surrender of options and shares

- (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, not being shares in respect of which the company has made a loan for which any liability to the company is outstanding,
- 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) 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) 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.

Maximum penalty: 2 penalty units.

(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, the person shall not be entitled to receive any dividends declared in respect of those shares and not actually paid before the surrender.

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

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.

Maximum penalty: 5 penalty units.

45 Register of forfeitures and surrenders to be kept

(1) A loan fund company:

(a) shall:

- (i) if it is a company within the meaning of the *Companies (New South Wales) Code* keep at the place at which the register of members is kept,
- (ii) if it is a recognised company or a foreign company and keeps a branch register in New South Wales of members who are resident in New South Wales, keep at the place where that branch register is kept, or
- (iii) if it is a recognised company or a foreign company to which subparagraph (ii) does not apply, keep at its principal or registered office in New South Wales, 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.

Maximum penalty: 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 0.5 penalty unit 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) 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 keeps a branch register in New South Wales of members who are

resident in New South Wales, that register, is open for inspection and may make copies of, or take extracts from, the register so kept.

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

(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 the person's 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) if the balance sheet of the company as at the end of the financial year of the company last preceding the date of the forfeiture or surrender 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 end of the financial year of the company last preceding the date of the forfeiture or surrender, 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 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:

(c) 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, and

(d) in the case of forfeited or surrendered loan entitlement shares in respect of which the company has made a loan which has been discharged, unless no money is payable (whether or not due for payment) by the company under this subsection or subsection (2) in respect of any forfeited or surrendered options, option nominations or shares (not being shares in respect of which the company has made a loan which has been discharged).

(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 the person has died or is under a legal disability, to such person as appears to the company to be the lawful representative of 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.
- (4A) A loan fund company shall not pay an amount payable under subsection (1) in the case of forfeited or surrendered loan entitlement shares in respect of which the company has made a loan which has been discharged, unless no money is payable (whether or not due for payment) by the company under subsection (1) or (2) in respect of any forfeited or surrendered options, option nominations or shares (not being shares in respect of which the company has made a loan which has been discharged).
- (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) 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 5 penalty units.

47 Cancellation of options and shares

- (1) 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.
- (2) On the forfeiture or surrender, under section 42 or 43, of any shares in respect of which the holder has or had a vested loan entitlement (whether or not a loan has been made in respect of the shares), the vested loan entitlement is extinguished.

47A Distribution of surplus funds

- (1) Where:
 - (a) a person has forfeited or surrendered any option or shares under section 42 or 43 to a company,
 - (b) the company has deducted from the amount otherwise payable under section 46 to the person or the person's lawful representative an amount referred to in section 46 (1) (a) (iii) in respect of an accumulated loss, and
 - (c) the company has, at any time after the forfeiture or surrender, surplus funds,the Supervisor may direct the company to make a distribution in accordance with this section, out of those surplus funds to the person or the person's lawful representative.
- (2) Unless the Supervisor, having regard to the circumstances of the case, otherwise determines, the amount of the distribution to a person to whom subsection (1) applies shall be:
 - (a) an amount bearing the same proportion to the surplus, or such part of the surplus as is directed, under subsection (1), to be distributed, as the amount deducted in relation to the person under section 46 (1) (a) (iii) bore to the accumulated loss, or
 - (b) an amount equivalent to the amount deducted in relation to the person under section 46 (1) (a) (iii),whichever is the lesser.
- (3) Where, immediately before a distribution is made by a company in accordance with a direction under subsection (1), there was payable to the company by a person to whom subsection (1) applies a sum comprising any one or more of the following, namely:
 - (a) money liable to be paid under section 42 (5),

(b) a fee or penalty referred to in section 46 (1) (a) (i),

(c) an amount referred to in section 46 (1) (a) (ii),

that sum may be deducted by the company from the amount determined in accordance with subsection (2).

- (4) The Supervisor shall not give a direction under subsection (1) to a company unless the Supervisor is of the opinion that the benefit to be derived by the persons to whom subsection (1) applies corresponds with the benefit to be derived by those persons who, as at the date of the distribution made in accordance with that direction, hold any options to acquire loan entitlement shares or any qualifying shares or loan entitlement shares in the company.

Part 6 Special powers with respect to the supervision of loan fund companies

Division 1 Inspections

48 Powers of inspection

(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 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) make such examination and enquiries as the Supervisor or inspector 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

49 Interpretation for the purposes of this Division

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.

50 Power to hold inquiry

- (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, the Minister may, either of the Minister's 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 the Minister thinks necessary to enable the Minister 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, the Supervisor shall forthwith notify the loan fund company concerned in writing of that appointment and of the terms of that appointment.

51 Procedure with respect to holding of inquiry

- (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:
 - (a) to produce to the Supervisor such records relating to a matter to which the Supervisor's 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) Where records are produced to the Supervisor under this section, the Supervisor may take possession of those records for such period as the Supervisor thinks necessary for the purposes of the inquiry, and during that period the Supervisor 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 the person is able to comply with it,
 - (b) in purported compliance with such a requirement provide information which is to the person's 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 the person's knowledge false or misleading as to a material particular, or
 - (ii) refuse or fail to take an oath.

Maximum penalty: 10 penalty units.

- (4) An Australian 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) A specified person is not excused from answering a question put to the person by the Supervisor on the ground that the answer might tend to incriminate the person but, where that person claims, before answering the question, that the answer might incriminate the person, neither the question nor the answer is admissible in evidence against the person 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 that person is capable of complying with it, the Supervisor may certify the failure in writing under the Supervisor's 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 the person is 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 the person had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).
- (10) An inquiry under this Division is, for the purposes of Part 2.2 (Documents) of the

Evidence Act 1995, taken to be a proceeding to which that Act applies.

- (11) The Supervisor shall cause notes of an examination made by the Supervisor 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 the person 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.

52 Report of Supervisor

- (1) When the Supervisor has completed the Supervisor's inquiry under this Division, the Supervisor shall prepare and give to the Minister a report of the Supervisor's 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 the Minister's opinion might be, instituted might be unduly prejudiced by giving the report to that person.
- (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 the Minister 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, the Minister may, by notice in writing given before or after the institution of a prosecution in accordance with subsection (5), require a person whom the Minister 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 an Australian 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) 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.

53 Further powers of Supervisor after inquiry

After completing an inquiry under this Division, the Supervisor:

- (a) may retain the records of which the Supervisor has taken possession under section 51 for such period as the Supervisor 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 the Supervisor 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 the Supervisor's 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.

54 Privileged communications

The Supervisor shall not require disclosure by an Australian legal practitioner of a privileged communication made to the practitioner in the practitioner's capacity as such except as regards the name and address of the practitioner's client.

55 Expenses of inquiry

- (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 the Minister in the name of a loan fund company under section 52 (8)) shall be defrayed out of money provided by Parliament for the purpose.

- (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.

56 Concealing etc of records

- (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 50 penalty units 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

57 Powers of Supervisor with respect to prospectuses

- (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), the Supervisor 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 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 5 penalty units.
- (5) Nothing in this section affects the operation of Part IV of the *Companies (New South Wales) Code* 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 Powers with respect to advertising

- (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, the Supervisor 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) 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).

Maximum penalty: 5 penalty units.

(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 the Supervisor 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 Power to suspend the acceptance of money by loan fund companies

- (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, the Supervisor may, by notice in writing served on the company, give to the company either or both of the following directions:
 - (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) 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.

Maximum penalty: 10 penalty units and, in the case of a continuing offence, a further penalty not exceeding 1 penalty unit for each day during which the offence continues.

60 Appointment and powers of administrator

- (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:

- (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, of the *Companies (New South Wales) Code* 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 6A of the *Companies Act 1961* or under Part VII of the *Companies (New South Wales) Code*, 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 the administrator's appointment is terminated under this Division,
 - (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 the administrator's 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 the administrator's appointment as such, take into the administrator's custody or under the administrator's 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 the administrator by the Supervisor, conduct the affairs and activities of the company in such manner as the administrator 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, the administrator shall be chairperson of any meeting or adjourned meeting of the company.

(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 the administrator's office if:

(a) the administrator dies,

(b) the administrator becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration as administrator, or of his or her estate, for their benefit,

(c) the administrator 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 7 of that Act,

(d) the administrator is convicted in New South Wales of a crime or an offence punishable by imprisonment for 12 months or more, or the administrator 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) the administrator resigns his or her office by writing under his or her hand addressed to the Supervisor, or

(f) the administrator's 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) 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 (New South Wales) Code* 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.

61 Holding of meeting for appointment of directors

- (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 the administrator 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 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 in Schedule 3 to the *Companies (New South Wales) Code*.
- (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 Expenses of administration

- (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.

- (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) 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.

63 Liability for losses incurred during administration

- (1) An administrator of a loan fund company is not liable for any loss incurred by that company during the administrator's term of office unless the loss was attributable to:
 - (a) the administrator's wilful misconduct,
 - (b) the administrator's gross negligence, or
 - (c) the administrator's 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.

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

- (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 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) 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 the administrator's powers, authorities, duties or functions as such before the order takes effect.

Part 7 Miscellaneous provisions

Division 1 Proceedings

65 Offence to obstruct Supervisor etc

Any person who:

- (a) refuses or intentionally delays the admission to any place of the Supervisor or an

inspector in the exercise by the Supervisor or inspector of the Supervisor's or inspector's powers under this Act,

- (b) intentionally obstructs the Supervisor or an inspector in the exercise by the Supervisor or inspector of any such power,
- (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 5 penalty units.

66 Proceedings for offences

Proceedings for an offence against this Act or the regulations:

- (a) shall be disposed of summarily before the Local Court, and
- (b) may be commenced within 3 years after the date on which the offence is alleged to have been committed.

67 Liability of directors etc for offences by corporation—accessory to the commission of the offences

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation.
- (2) A person commits an offence against this section if:
 - (a) a corporation commits a corporate offence, and
 - (b) the person is:
 - (i) a director of the corporation, or
 - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
 - (c) the person:
 - (i) aids, abets, counsels or procures the commission of the corporate offence, or
 - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or

- (iii) conspires with others to effect the commission of the corporate offence, or
- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty: The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence, and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

68 Evidence

- (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 the Supervisor and to be certified by the Supervisor 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

69 Report to Parliament

- (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 the Supervisor's activities under, this Act during the period of 12 months ending on that date.
- (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 the Minister of the report.

70 Inspection of documents etc

The Supervisor shall, on being requested to do so by any person attending the

Supervisor's 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 the Supervisor 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 the Supervisor's hand and seal.

71 Regulations

- (1) The Governor may make regulations, not inconsistent 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) 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 5 penalty units and, in the case of a continuing offence, a further penalty not exceeding 0.1 penalty unit for each day during which the offence continues.

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

- (1) In its application to a loan fund company, the *Companies (New South Wales) Code* shall be read as if:
- (a) after section 363 (1) the following sub-section had been inserted:
- (1A) Without prejudice to the application of sub-section (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 sub-section.
- (b) the word “or” had been omitted from section 364 (1) (h) where lastly occurring,
- (c) the words “wound up.” had been omitted from section 364 (1) (j) and the words “wound up; or” had been inserted instead,
- (d) after section 364 (1) (j), the following paragraph had been inserted:
- (k) 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 the Supervisor under section 23, or to comply with a notice served on the company under section 24, of that Act,
- (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 6 of that Act, reported that the Supervisor 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 (New South Wales) Code*" in section 441 (j), 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 442 (1), 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) after the words "the order" in section 442 (1), the words ", or, as the case may be, the service of the direction" had been inserted,
- (h) the word "or" had been omitted from section 470 (1) (c) (iii),
- (i) the words "wound up." had been omitted from section 470 (1) (c) (iv) (B) and the words "wound up; or" had been inserted instead, and
- (j) after section 470 (1) (c) (iv), the following sub-paragraph had been inserted:
 - (v) 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) 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 (New South Wales) Code* 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 1

(Section 34)

Part 1 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 ‡ 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 .
- 16 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 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 2 Requirements as to statutory statement

- 1.** The statement set out in Part 1 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.
- 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.

Schedule 2 Notice of cancellation

(Sections 34, 35)

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.