

CAYMAN ISLANDS



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BUILDING SOCIETIES LAW

(2014 Revision)

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Note (not forming part of the Law): This revision replaces the 2010 Revision which should now be discarded.

BUILDING SOCIETIES LAW

(2014 Revision)

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BUILDING SOCIETIES LAW

(2014 Revision)

Introductory

1. This Law may be cited as the Building Societies Law (2014 Revision). Short title

2. In this Law- Definitions
 - “accountant”, “actuary” and “auditor” mean a person approved by the Cabinet as such for the purpose of carrying out external audits and investigations under this Law;
 - “Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law (2013 Revision) and includes any employee of the Cayman Islands Monetary Authority acting under the Authority’s authorisation; 2013 Revision
 - “book” includes a card or other device for the purpose of recording business transactions;
 - “Court” means the Grand Court and includes a Judge of the Court;
 - “Inspector” means an inspector appointed under section 35;
 - “Judge” means a Judge of the Court;
 - “Registrar” means the Registrar of Companies appointed under section 3 of the Companies Law (2013 Revision); and 2013 Revision
 - “society” means a society incorporated under section 3.

Incorporation of Building Societies

3. (1) Any number of persons who desire to establish a building society, may on having its rules certified as by this Law provided, obtain from the Registrar a certificate of incorporation in Form A in Schedule 1: Incorporation of societies
 - Provided that no society shall be incorporated in a name identical with a then existing society, or so nearly resembling the same as to be calculated to deceive, unless such existing society is in course of being terminated or dissolved and consents to such registration.

- (2) The society shall supply to any person requiring it a complete printed copy of the rules, with a copy of the certificate of incorporation appended thereto,

and shall be entitled to charge for every such printed copy a sum not exceeding one dollar.

Rules and Certification

Rules

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

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

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

- (j) the powers and duties of the board of directors or committee of management and other officers;
- (k) the fines and forfeitures to be imposed on members of the society;
- (l) the manner in which the society shall be terminated or dissolved;
- (m) the manner in which the stock or funds of the society is or are to be raised;
- (n) the terms upon which unadvanced subscription shares are to be issued, the manner in which contributions are to be paid to the society and withdrawn by the members, with tables, where applicable in the opinion of the Attorney General, showing the amount due by the society for principal and interest respectively;
- (o) the terms upon which paid-up shares, if any, are to be issued and withdrawn, with tables, where applicable in the opinion of the Attorney General, showing the amount due by the society for principal and interest respectively;
- (p) whether preferential shares are to be issued, and if so, within what limits;
- (q) the manner in which advances are to be made and repaid, the deductions, if any, for fire or life insurance premiums, and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made, with tables, where applicable in the opinion of the Attorney General, showing the amount due from the borrower, after each stipulated payment;
- (r) the manner in which losses are to be ascertained and provided for;
- (s) the manner in which membership is to cease; and
- (t) whether the society intends to borrow money, and if so, within what limits, not exceeding those prescribed by this Law.

5. (1) No society shall-

Maximum interest and
fines

- (a) charge interest on a loan to any member of the society at a rate in excess of twelve point five per cent per annum; or
- (b) impose any fine or penalty upon any member of the society who is in arrears in respect of the payment of any subscription to any share in the society or in respect of the payment of any interest on, or the repayment of any principal of, any loan from the society, in excess of two per cent or a proportionate part thereof, per month or part of a month on any such arrears so, however, that no fine or penalty shall exceed twenty per cent.

(2) No society shall by its rules provide for or permit the charging of interest or the imposition of fines or penalties in excess of the rates set out in subsection (1), and so much of the rules of any society as provide for or permit the charging of interest or the imposition of fines or penalties in excess of the said

rates shall be deemed to have been amended so that the maximum interest, fines or penalties, which may be charged or imposed shall be the maximum interest, fines or penalties, set out in subsection (1).

Trusts upon which mortgages are to be taken

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

Rules and alterations to be submitted to Attorney General

7. (1) Two transcripts of all rules made by any society under this Law, and of all alterations, amendments, rescissions and annullings thereof, signed by three directors and countersigned by the clerk or secretary of the society, shall be submitted, within one month from the making, to the Attorney General, for the purpose of advising and certifying that such rules, amendments, alterations, rescissions and annullings are calculated to carry into effect the intention and purposes for which the society was formed, and are in conformity to law and this Law, and advising and certifying what parts of the same are repugnant thereto. When such transcripts have been so certified, one shall be returned to the society and kept by such society or the proper officer thereof for the time being, and the other transcript forthwith transmitted by the Attorney General to the Registrar, to be filed and preserved in the office of the Registrar.

(2) The receipt of such certified transcript shall be an authority to the Registrar to register such society by entering its name in the register book mentioned in section 29 (if such society is not already registered) and thereupon the society shall be deemed to be a duly incorporated building society under this Law. The rules, and all alterations and amendments, certified, transmitted and filed, shall be, from the time of the filing, the rules of the society to which they relate until they are duly rescinded, annulled or altered, and are binding on the members and officers of the society, the contributors and subscribers, all other persons having interest therein, on their representatives and on all persons claiming on account of a member or under the rules, all of whom shall be deemed to have full notice thereof.

(3) If the Attorney General refuses to certify any rules, alterations or amendments, it shall then be lawful for the persons or society desirous of having

the same certified to submit the same to a Judge together with the reasons in writing of the Attorney General for his refusal (which reasons the Attorney General is required on demand to give); and thereupon such Judge may, if he thinks fit, confirm and allow the said rules, alterations or amendments, notwithstanding the refusal of the Attorney General to certify the same; and thereupon the Judge shall cause one transcript of the said rules, alterations or amendments to be sent to the Registrar and the other to the society, and on such rules, alterations or amendments being confirmed and allowed by the Judge, the same consequences shall ensue as if the same had been certified by the Attorney General.

8. (1) There shall be paid to the Registrar for the public revenue one hundred dollars in respect of the incorporation of every society under this Law and every society shall pay an annual fee of one hundred dollars upon each anniversary of its incorporation.

Incorporation and annual fees

(2) In addition to fees payable under subsection (1), a society shall, on or before 15 January in each year, pay to the Registrar a regulatory fee of seven thousand dollars.

Amalgamation of Societies

9. (1) Two or more building societies may unite and become one society, with or without any dissolution or division of the funds of such societies or either of them, or a building society may transfer its engagements to any other society upon such terms as are agreed upon in writing by the holders of not less than sixty-six point six recurring per cent of the total shares of each of such societies, whether present or not at general meetings respectively convened for the purpose; but no such transfer shall prejudice any right of any creditor of either society. Notice of every such resolution shall be recorded in the office of the Registrar.

Societies may unite with others, or one society may transfer its engagements to another

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

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

Change of Name or Office and Purchase of Buildings for Business

Change of name 10. (1) A society may change its name by resolution of seventy-five per cent of the members present at a meeting called for the purpose:

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

(2) Notice of the change of name shall be sent to the Registrar and be registered by him, and he shall give a certificate of registration.

(3) Such change of name shall not affect any right or obligation of the society, or of any member thereof, or other person concerned.

Change of chief office 11. (1) Any society may change its chief office in the manner its rules direct, or if there be no such direction, then at a general meeting specially called for the purpose in the manner set forth in the rules of the society; and no alteration of rule shall be necessary upon such change, nor shall section 7 apply to such change.

(2) Notice of every such change shall be given by the secretary of the society to the Registrar within seven days after such change, and shall be registered by him by being recorded in his office, and he shall give a certificate of such registration, and the secretary of the society shall advertise the same for two days in any one of the newspapers published in the Islands, and where there is no newspaper published in the Islands then in one of the newspapers circulating in the Islands.

Buildings for purposes of society may be purchased or leased 12. A society incorporated under this Law may purchase, build, hire or take upon lease any building for conducting its business, may adapt and furnish the same and may purchase or hold upon lease any land for the purpose only of erecting thereon a building for conducting the business of the society, and may sell, exchange or let such building or any part thereof.

Officers

Officers to give security 13. (1) Every officer of a society having the receipt or charge of any money belonging to the society shall, before taking upon himself the execution of his office, become bound with at least one sufficient surety in a bond in the form in Schedule 2, or give the security of a guarantee society or such other security as the society directs, in such sum as the society requires, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society, and at such times as its rules appoint or as the society requires him to do so.

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

Members

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

Minors may be elected members

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

Shares may be held by two or more persons

Advances to Members

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

Power to make advances on freehold securities

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

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

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

such borrower or borrowers shall cease to be a member or members of the society in respect of such share or shares.

Limitation of Liability of Members

Limitation of liability of members

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

Power of Society to Borrow Money

Power to borrow money

19. With respect to the borrowing of money by societies incorporated under this Law-

- (a) any such society may receive deposits or loans at interest, within the limits in this section provided, from the members or other persons, or from corporate bodies or joint stock companies, to be applied to the purposes of the society; and
- (b) the total amount so received on deposit or loan and not repaid by the society shall not at any time exceed seventy-five per cent of the amount for the time being secured to the society by mortgages from its members.

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

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

Annual Audit and Statement of Accounts

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

21. (1) The secretary or manager of a society shall, at least once in every year, prepare -

- (a) an account of all the receipts and expenditure of the society since the preceding statement; and
- (b) a general statement of -
 - (i) its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively to depositors and creditors for loans;

- (ii) the balances due or outstanding on their mortgage securities, not including prospective interest; and
- (iii) the amount invested otherwise than in loans to members under sections 16 and 17.

(2) Every such account and statement shall be-

- (a) attested by the auditors to whom the mortgage deeds and other securities belonging to the society shall be produced; and
- (b) countersigned by the secretary or manager.

(3) Every member, depositor and creditor for loans is entitled to receive from the society a copy of the account and statement, and a copy thereof shall be sent to the Authority within fourteen days after the annual or other general meeting at which it is presented.

(4) The Authority shall see that the statement conforms to the requirements of this section.

(5) A copy of the account and statement shall be displayed by the society in a conspicuous place in every office of the society.

(6) A copy of the account and statement forwarded to the Authority shall be gazetted by the society that prepared such account and statement.

22. (1) Every annual account and statement under section 21 shall be made up to the end of the official year of the society to which it relates, be in such form and contain such particulars as the Authority may, from time to time, with the approval of the Cabinet, direct, either generally or with respect to any society or class of societies:

Form and contents of
annual statements under
section 21

Provided that every such account and statement shall contain the particulars mentioned in section 21, and shall set forth-

- (a) with respect to mortgages to the society upon each of which the present debt does not exceed twenty thousand dollars (not being mortgages where the repayments are upwards of twelve months in arrears, or where the property has for upwards of twelve months been in possession of the society), the number of all such mortgages and the aggregate amount owing thereon at the date of the account or statement, such information being given separately-
 - (i) where the debt does not exceed two thousand dollars;
 - (ii) where the debt exceeds two thousand dollars and does not exceed ten thousand dollars;
 - (iii) where the debt exceeds ten thousand dollars and does not exceed fifteen thousand dollars;

- (iv) where the debt exceeds fifteen thousand dollars and does not exceed twenty thousand dollars; and
- (b) with respect to any other mortgage to the society, the particulars shown by the appropriate form in Schedule 3.

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

(3) In this section-

“official year” means such period of twelve calendar months as may, from time to time, be determined upon by any such society, terminating on the date up to which its annual account and statement are made up.

Determination of Disputes

Determination of
disputes by arbitration

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

(2) The word “disputes” in subsection (1) or in the rules of any society shall be deemed to refer only to disputes between the society and a member, or any representative of a member in his capacity of a member of the society, unless by the rules for the time being it shall be otherwise expressly provided; and in the absence of such express provision, shall not apply to any dispute between any

such society and any member thereof, or other person whatever, as to the construction or effect of any mortgage deed, or any contract contained in any document other than the rules of the society, and shall not prevent any society, any member thereof or any person claiming through or under him from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled.

24. The Court may hear and determine a dispute-

Determination of
disputes by Court

- (a) if it appears to the Court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party, for the purpose of having the dispute settled by arbitration under the rules of the society and that such application has not within forty days been complied with, or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award; or
- (b) where the rules of the society direct disputes to be referred to the Court.

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

Determination to be
final

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

Termination or Dissolution of a Society

26. (1) A society may terminate or be dissolved-

Proceedings necessary
for termination or
dissolution of a society

- (a) upon the happening of any event declared by its rules to be the termination of the society;
- (b) by dissolution in manner prescribed by its rules;
- (c) by dissolution with the consent of seventy-five per cent of the members holding not less than sixty-six point six recurring per cent of the number of shares in the society, testified by their signatures to the instrument of dissolution;
- (d) by winding up, either voluntarily under the supervision of the Court, or by the Court, if the Court so orders on the petition of

any member authorised by seventy-five per cent of the members present at a general meeting of the society specially called for the purpose to present the same on behalf of the society, or on the petition of any judgment creditor for not less than two hundred dollars, but not otherwise.

(2) Every instrument of dissolution under paragraph (c) of subsection (1) shall state-

- (a) the liabilities and assets of the society in detail;
- (b) the number of members, and the amount standing to their credit in the books of the society;
- (c) the claims of depositors and other creditors, and the provision to be made for their payment;
- (d) the intended appropriation or division of the funds and property of the society; and
- (e) the names of one or more persons to be appointed trustees for the special purpose, and their remuneration.

(3) Alterations in an instrument of dissolution under paragraph (c) of subsection (1) may be made with the like consent and testified in the same manner as the instrument of dissolution.

(4) The instrument of dissolution and all alterations therein shall be recorded in the office of the Registrar, and shall be binding upon all the members of the society.

(5) The Chief Justice may make Rules for regulating proceedings under paragraph (d) of subsection (1).

(6) Every order for winding up under paragraph (c) of subsection (1) shall be recorded in the office of the Registrar.

Continued application of this Law to societies being dissolved

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

Liability of advanced members when society is being wound up

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

Register of Societies, Proof of Registry, etc., Evidence of Documents and Fees for Certificate

29. (1) The Registrar shall keep, in the office of the Registrar, a register of all societies incorporated under this Law. Register of societies in the office of Registrar

(2) Such register shall always be open to public inspection on payment of such fee as may be fixed by any enactment authorising the fixing of such fee.

30. The Registrar shall enter on such register the name and place of business of every society incorporated under this Law, and if such society is dissolved the Registrar shall strike the name of such society off the register. Particulars to be entered on such register

31. (1) The production of a copy of the rules of any society certified as herein provided, or a certificate under the hand of the Registrar that any such society is registered under this Law, shall be conclusive evidence that such society was at the date of the certificate duly established under this Law, and shall be presumptive evidence of such establishment at the time of the production of the same. Proof of registry and of rules of societies

(2) The rules and alterations or amendments thereof of any society may be proved in any court in the Islands by production of a copy of the transcript of the same, certified as aforesaid and filed in the office of the Registrar:

Provided that such copy purports to be certified to be a true copy of the said rules as they stand at the time, under the hand of the Registrar and sealed with the seal of the office.

(3) Any certificate of incorporation or other document relating to a society purporting to be signed by the Registrar shall, in the absence of any evidence to the contrary, be received by the Court and by all courts of law and equity and elsewhere without proof of the signature; and a printed copy of the rules of a society certified by the secretary or other officer of the society to be a true copy of its registered rules shall, in the absence of any evidence to the contrary, be received as evidence of the rules.

32. There shall be paid to the Registrar for every certificate required under this Law a fee of two dollars. Registrar's fees for certificates

Regulation of Building Societies by Monetary Authority

33. (1) Without prejudice to any other provision of this Law, it is the duty of the Authority- Powers and duties of Authority

- (a) to maintain a general review of building society practice in the Islands;
- (b) whenever the Authority thinks fit, to examine the affairs or business of any society carrying on the business of a building society in the Islands for the purpose of satisfying itself that this Law has been or is being complied with, and that the society is in a sound financial position and is carrying on its business in a satisfactory manner;
- (c) to assist in the investigation of any offence against the laws of the Islands which the Authority has reasonable grounds to believe has or may have been committed by a society or by any of its directors or officers in their capacity as such; and
- (d) to examine annual accounts and statements prepared under section 21, and report on them to the Cabinet whenever the Authority thinks fit.

(2) In matters relating to building societies, the Authority shall take all necessary action to ensure the proper and just implementation of this Law.

2013 Revision

(3) In the performance of its functions under this Law and subject to the Monetary Authority Law (2013 Revision), the Authority is entitled at all reasonable times-

- (a) to have access to such books, records, vouchers, documents, cash and securities of any society;
- (b) to request such information, matter or thing from any person who the Authority has reasonable grounds to believe is carrying on business in contravention of this Law; and
- (c) to call upon the committee of management or board of directors of the society or any officer designated by the committee or board, for such information or explanation,

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law; and information requested under paragraph (b) shall be provided in such form as the Authority may reasonably require.

(4) If it appears to the Authority that there are reasonable grounds for suspecting that an offence against this Law has been or is being committed by any society, the Authority may take such action as it considers necessary, in the interest of the members or creditors of the society, to preserve any assets held by the society.

(5) A person who fails to comply with any requirement under subsection (3) by the Authority commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

34. (1) Whenever the Authority is of the opinion that a society -
- (a) is or appears likely to become unable to meet its obligations as they fall due;
 - (b) is carrying on business in a manner detrimental to the public interest or the interest of its members or creditors; or
 - (c) has contravened this Law,

Powers of Authority in respect of building societies

the Authority may forthwith do any of the following-

- (i) require the substitution of any director or officer of the society;
- (ii) at the expense of the society, appoint a person to advise the society on the proper conduct of its affairs and to report to the Authority thereon within three months of the date of his appointment;
- (iii) at the expense of the society, appoint a person to assume control of the society's affairs who shall, with any necessary changes, have all the powers of a person appointed, under section 18 of the Bankruptcy Law (1997 Revision), as a receiver or manager of a business; and
- (iv) require such action to be taken by the society as the Authority considers necessary.

1997 Revision

(2) A society may, within seven days of the Authority's decision, apply to the Authority for a reconsideration of its decision.

(3) A person appointed under paragraph (ii) or (iii) of subsection (1) or whose appointment has been extended under paragraph (b) of subsection (4) shall, from time to time at his discretion and in any case within three months of the date of his appointment or of the extension of his appointment (as the case may be), prepare and furnish a report to the Authority of the affairs of the society and of his recommendations thereon.

- (4) On receipt of a report under subsection (3), the Authority may-
- (a) revoke the appointment of the person appointed under paragraph (ii) or (iii) of subsection (1);
 - (b) extend the period of his appointment;
 - (c) subject to such conditions as the Authority may impose, allow the society to reorganise its affairs in a manner approved by the Authority; or
 - (d) apply to the Court for an order that the society be forthwith wound up by that Court in which case the provisions of the Companies Law (2013 Revision) relating to the winding up of a company by that Court shall, with any necessary changes, apply.

2013 Revision

Power of search

35. (1) If a magistrate or justice of the peace is satisfied by information on oath given by the Authority that-

- (a) there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (b) any books, records, vouchers, documents, cash or securities which ought to have been produced under section 33(3) and have not been produced are to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorising the Authority or any constable of the rank of Inspector or above, together with any other person named in the warrant and any other constables to enter the premises specified in the information or, as the case may be, any premises upon which the vehicle, vessel or aircraft so specified may be, at any time within one month from the date of the warrant, and to search such premises or, as the case may be, such vehicle, vessel or aircraft.

(2) The person authorised by any such warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises or that vehicle, vessel or aircraft, as the case may be, and may seize any books, records, vouchers, documents, cash or securities found in the possession of any such person or in such premises or in such vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under section 33(3).

(3) No female shall, in pursuance of any warrant issued under this section, be searched except by a female.

(4) Where, under this section, a person has any power to enter any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

(5) A person who obstructs the Authority, or any other person in the exercise of any powers conferred under this section, commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

Appeals

36. (1) An appeal lies to the Court from any decision of the Authority.

(2) An appeal against the decision of the Authority shall be by motion.

(3) The appellant, within twenty-one days after the day on which the Authority has given its decision, shall serve a notice in writing signed by the appellant or his attorney-at-law on the Authority of his intention to appeal and of the general ground of his appeal.

(4) Any person aggrieved by a decision of the Authority may, upon notice to the Authority, apply to the Court for leave to extend the time within which the notice of appeal prescribed by this section may be served, and the Court, upon the hearing of such application, may extend the time prescribed by this section as it considers fit.

(5) The Authority shall, upon receiving the notice of appeal, transmit to the Clerk of the Court without delay a copy of the decision and all papers relating to the appeal, but the Authority is not compelled to disclose any information if it is considered that the public interest would suffer by such disclosure.

(6) The Clerk of Court shall set the appeal down for argument on such day, and shall cause notice of the same to be published in such manner, as the Court may direct.

(7) At the hearing of the appeal the appellant shall, before going into the case, state all the grounds of appeal on which the appellant intends to rely and shall not, unless by leave of the Court, go into any matters not raised by such statements.

(8) The Court may adjourn the hearing of an appeal and may, upon the hearing thereof confirm, reverse, vary or modify the decision of the Authority or remit the matter with the opinion of the Court thereon to the Authority.

(9) An appeal against a decision of the Authority shall not have the effect of suspending the execution of such decision.

37. The Authority shall not be liable in damages for anything done or omitted in the discharge or purported discharge of its functions under this Law, unless it is shown that the act or omission was in bad faith. Immunity

Appointment of Accountant or Actuary to Inspect Books

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

(2) The applicants under subsection (1) shall deposit with the Court such sum as a security for the costs of the proposed inspection as the Judge may require; and all expenses of and incidental to any such inspection shall be defrayed by the applicants, unless the Judge, for good cause shown, orders the same to be paid out of the funds of the society, or by the members or officers or former members or officers of the society or any one or more of them.

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

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

Penalty for obstructing
accountant or actuary

39. A person who obstructs any accountant or actuary appointed under section 38, in the execution of his duty, commits an offence and is liable on summary conviction to a fine of one hundred dollars.

Appointment by Court or Society of Inspector to Examine into Affairs of Society

Power to order enquiry
into affairs of society

40. A Judge may, on the application of any seven or more shareholders or members of any society under this Law carrying on business in the Islands, who satisfy him by affidavit and *viva voce* examination that such applicants have a *bona fide* interest in the said society, and that-

- (a) they have good reason for believing that the funds of the said society have not been applied or are not being applied in accordance with this Law;
- (b) the rules or bye-laws relating to the funds of the said society have been and continue to be knowingly infringed by the directors or other officers of the said society, to the possible detriment of the shareholders or members of the society; or
- (c) the statement of the affairs of the society last issued is not a just and true statement of the affairs of the said society,

issue an order calling upon such society to show cause why one or more competent Inspectors should not be appointed to examine into the affairs of any such society, and to report thereon in such manner as the Judge may direct, and on failure to show cause at the time appointed an Inspector or Inspectors shall be appointed:

Provided always, that the Judge may require the applicants first to satisfy him, in such manner as may seem best to him, that their conduct is actuated by no personal or malicious motive, but that their application is for the interest of the

shareholders or members of the said society; and he may further require the applicants to give security for payment of costs of the inquiry before appointing any Inspector or Inspectors:

Provided further that in the case of any society consisting of less than twenty-one members, no such application shall be made except by not less than thirty-three point three recurring per cent of the number of shareholders or members, or by any number of shareholders or members possessing twenty per cent of the shares or funds.

41. In the event of the Court refusing an appointment under section 40, costs shall be granted to the directors as between attorney-at-law and client, and in the event of the Court finding from the report of the Inspectors that the society is insolvent, or that by its management the property and funds of its shareholders are in danger, the Judge may call on the said society to show cause why a winding-up order should not be made against it.

Costs on refusal of appointment, etc.

42. All officers and agents of the society shall produce, for the examination of the Inspectors, all books and documents in their custody or power; any Inspector may examine upon oath the officers and agents of the society in relation to its business, and may administer such oath accordingly, and any officer or agent who refuses or neglects to produce any book or document hereby directed to be produced or to answer any question relating to the affairs of the society, commits an offence and is liable on summary conviction to a fine of two hundred dollars in respect of each such offence.

Powers of Inspectors

43. (1) Upon the conclusion of the examination, the Inspectors shall report their opinions to the Court, and such report shall be filed by the Court and open to public inspection.

Report of Inspectors, filing and payment of costs thereof

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

44. Any society as aforesaid may, by special resolution, appoint Inspectors for the purpose of examining into the affairs of such society, the Inspectors so appointed shall have the same powers and perform the same duties as Inspectors appointed by the Court, with this exception, that instead of making their report to the Court, they shall make the same in such manner and to such persons as the society in general meeting directs; and the officers and agents of the society shall incur the same penalties in case of any refusal or neglect to produce any book or document hereby required to be produced to such Inspectors, or to answer any

Inspection by resolution of the society

question, as they would have incurred if such Inspectors had been appointed by the Court.

Inspectors' report
admissible as evidence

45. The report of any Inspectors appointed under this Law, or any copy thereof certified and signed by the Inspectors, is admissible in any legal proceedings as evidence of the opinion of the Inspectors in relation to any matter contained in such report.

Power of Judge to make
order under section 40

46. A Judge may make an order under section 40 on the application of any member of any building or benefit building society carrying on business in the Islands, who has been a member for not less than twelve months, and who satisfies the said Judge by affidavit that he has a *bona fide* interest in the society, and that the society has, for two months after notice, failed to prepare any account or statement required by this Law.

Offences and Penalties

Punishment of fraud in
withholding money, etc.

47. (1) A person who, by false representation or imposition, obtains possession of any moneys, securities, books, papers or other effects of a society, or, having the same in his possession, withholds or misapplies the same, or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorised by law, commits an offence and is liable on summary conviction to a fine of one hundred dollars, with costs not exceeding twenty dollars, and to be ordered to deliver up to the society all such moneys, and securities, books, papers or other effects of the society, and to repay the amount of money applied improperly, and in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, to imprisonment for three months; but nothing herein contained shall prevent any such person from being proceeded against by way of indictment if a conviction has not been previously obtained against him for the same offence under this Law:

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

- (2) Proceedings under subsection (1) may be taken by or at the instance of-
- (a) the society;
 - (b) any member authorised by the society, the board of directors, the Authority, the Registrar or the Director of Public Prosecutions;
 - (c) the Authority;
 - (d) the Registrar; or
 - (e) the Director of Public Prosecutions.

48. (1) If any society hereafter formed or any persons representing themselves to be a building society commence business without first obtaining a certificate of incorporation under this Law, the person, or persons, by whom business shall have been so commenced, commits an offence and is liable, for every day business is so carried on, on summary conviction upon the complaint of the Registrar to a fine of twenty dollars.

Penalties

(2) If any society receives loans or deposits in excess of the limits prescribed by this Law, the directors or committee of management of such society receiving such loans or deposits on its behalf shall be personally liable for the amount so received in excess.

49. No director, secretary, surveyor, attorney-at-law or other officer of a society shall, in addition to the remuneration prescribed or authorised by the rules of the society, receive from any other person any gift, bonus, commission or benefit for or in connection with any loan made by the society, and a person who pays or accepts any such gift, bonus, commission or benefit commits an offence and is liable on summary conviction to a fine of four hundred dollars, and in default of payment to imprisonment for six months; and a person who accepts any such gift, bonus, commission or benefit, shall, as and when directed by the Court by whom he is convicted, pay over to the society the amount or value of such gift, bonus, commission or benefit, and in default of such payment commits an offence and is liable to imprisonment for six months.

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

50. A person who wilfully makes, orders or allows to be made any false statement in any document required by this Law to be sent to the Authority or the Registrar, or by erasure, omission or otherwise, wilfully falsifies any such document, commits an offence and is liable on summary conviction to a fine of four hundred dollars.

Falsifying document required to be sent to Registrar

51. If any society under this Law neglects or refuses-

Neglect or refusal to perform duties

- (a) to give any notice, send any return or document, or do or allow to be done, anything which the society is by this Law required to give, send, do or allow to be done; or
- (b) to do any act, or furnish any information required for the purposes of this Law by the Authority, the Registrar or an Inspector,

the society, and also every officer thereof bound by the rules thereof to fulfil the duty whereof a breach has been so committed, and if there is no such officer, then every member of the committee of management or board of directors of the society, unless it appears that he was ignorant of, or attempted to prevent the breach, commits an offence and, for each offence is liable on summary conviction to a fine of one hundred dollars, and in the case of a continuing offence to an additional fine of twenty dollars for every week during which the offence

continues.

Forms

Forms 52. The forms in the Schedules may be used under this Law.

Miscellaneous

Capital to be raised by shares 53. (1) Every society may raise its capital by shares, not exceeding an estimated ultimate value of five hundred dollars each and may provide for the payment of the amounts payable in respect of such shares by the shareholders by payments in full, or from time to time on account or by monthly or other periodical payments and every person making a payment on account of any share shall be deemed and entered as a shareholder, and be subject to and bound by the rules of such society for the time being.

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

Limitation of responsibility of officers 54. No officer of any society shall be liable to make good any deficiency which may arise in the funds of such society:

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

Appointment and removal of officers 55. The rules of a society may provide for the appointment, removal and dismissal, from time to time, of such presidents, directors, committees, secretaries, treasurers, builders, surveyors, attorneys-at-law, auditors, clerks and other officers, as may be deemed necessary or advisable for the working of such society, in such manner, on such terms, with such powers and by such majorities, as shall in and by such rules be provided; and all or any such officers may be appointed, removed or dismissed accordingly:

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

Society not formed until rules have been certified and filed 56. (1) No society shall be deemed a society within the meaning of this Law, until its rules shall have been certified and filed, and all rules and amendments and alterations thereof, and additions thereto, shall be and be deemed to be the rules of such society from the respective dates of their certification and filing as aforesaid, until the rescission, annulling, alteration or amendment thereof respectively shall be certified and filed, and except insofar as they may be so rescinded, altered or amended; and the rules for the time being of such society, so

certified and filed as aforesaid, shall be binding on the several members and officers thereof, and contributors, and subscribers thereto, and on their representatives, all of whom shall be deemed and taken to have full notice thereof.

(2) No rule of any society, after having been certified and filed as aforesaid, shall be altered, rescinded or repealed, nor shall any new rules be adopted except either as directed by the rules of such society or unless upon the requisition, in writing, of ten or more of the members of such society, holding in all not less than fifty shares, specifying the rules sought to be altered, rescinded or repealed, or adopted, and all alterations proposed to be made therein, which requisition shall be publicly exhibited at the rooms or office of such society at least one month before any meeting to consider the same shall be called; nor unless a general meeting shall be thereupon duly convened to consider the same; nor unless upon a vote of at least seventy-five per cent in number of the shareholders of such society present at such general meeting, and also upon the vote of shareholders holding at least seventy-five per cent of the number of shares held by the shareholders so present at such general meeting.

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

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

How business to be carried on

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

General meeting

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

Appointment of committees

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

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

Donations and bequests 60. Any society may receive donations and bequests from any person or persons for the purposes of such society or any of them, and all such sums shall be applicable to the general purposes of such society, or to the special purpose for which the same may be given, as the case may be, in the like manner as the contributions of the several members of such society are or shall be directed to be applied in pursuance of this Law, and shall not be applied in any other manner.

Bonuses on shares 61. Any society may have and receive from any member or members thereof any sum or sums of money by way of bonus on any share or shares, for the privilege of receiving the same in advance, prior to the same being realised, and also any interest for the share or shares so received, or any part thereof.

Members may sue and be sued by society 62. Members of any society accepting any office or employment under or by virtue of the rules thereof, being or becoming in any way indebted or liable to such society or having any claims against such society, may sue and be sued by such society, and shall be answerable, civilly and criminally, in respect of their actions, transactions and omissions in and about the business and property of such society, in like manner, and as fully, to all intents and purposes, as if they were not members of such society, or partners therein; and the fact of such membership shall not be set up, or in any way avail to delay or defeat any such civil or criminal proceeding or process in any part whatsoever.

Regulations 63. The Cabinet may make regulations-

- (a) varying the maximum rate of interest chargeable under paragraph (a) of section 5(1); and
- (b) generally prescribing anything desirable within the ambit of and for the better administration of this Law.

SCHEDULE 1

Forms of Certificates

Form A

section 3

Certificate of Incorporation

The Registrar hereby certifies that the.....Building Society, established at.....in....., is incorporated under the Building Societies Law (2014 Revision) this..... day of....., 20.....

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

.....
Registrar.

Form B

section 10

Certificate of Registration of Change of Name

The Registrar hereby certifies that the registered name of theBuilding Society established at.....is changed from the date hereof to the name following-.....

Thisday of....., 20.....

.....
Registrar.

Form C

section 11

Certificate of Alteration of Chief Office

The Registrar hereby certifies that the registered Chief Office of the..... Building Society established atis changed from the date hereof to the office or place following-.....

This..... day of....., 20.....

.....
Registrar.

Form D

section 31(1)

Certificate of Registration of Alteration of Rules

The Registrar hereby certifies that the foregoing alteration of (or addition to) the rules of the.....Building Society established at.....is recorded under the Building Societies Law (2014 Revision) this..... day of....., 20.....

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

.....
Registrar.

SCHEDULE 2

Form of Bond

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

Sealed with our seals.

Dated the day of....., in the year of our Lord.....

Whereas the above bounded A.B., hath been duly appointed to the office of....., of the Building Society, established as aforesaid, and he, together with the above bounded C.D., (as his surety) have entered into the above written bond subject to the condition hereinafter contained;

Now, therefore, the condition of the above written bond is such, that if the said A.B., shall and do render a just and true account of all moneys received and paid by him, and shall and do pay over all the moneys remaining in his hands, and assign and transfer or deliver all securities and effects, books, papers and property of or belonging to the said Society in his hands or custody, to such person or

persons as the said Society shall appoint, according to the rules of the said Society, together with the proper or legal receipts or vouchers for such payments, then the above written bond shall be void and of no effect, otherwise shall be and remain in full force and virtue.

SCHEDULE 3

Mortgage Particulars Forms

section 22(1)(b)

Form A

Particulars to be set forth in the case of a mortgage. where the repayments are not upwards of twelve months in arrears, and the property has not been upwards of twelve months in possession of the Society, and where the present debt exceeds twenty thousand dollars.

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

section 22 (1)(b)

Form B

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

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

	Total								

section 22 (1)(b)

Form C

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

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

SCHEDULE 4

section 26

Certificate of Dissolution

The Registrar hereby certifies that an instrument of dissolution of the..... Building Society, established atis recorded the.....day of....., 20....., under the Building Societies Law (2014 Revision).

Dated the..... day of....., 20.....

.....
Registrar.

Publication in consolidated and revised form authorised by the Cabinet this 16th day of September, 2014.

Kim Bullings
Clerk of Cabinet

(Price \$7.20)