

CONCURRENCE COPY

LOAN FUND COMPANIES (AMENDMENT) BILL, 1982

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Loan Fund Companies Act, 1976—

- (a) to make further provision for the forfeiture or surrender of loan entitlement shares and, in particular, to provide for the forfeiture or surrender of all such shares except those in respect of which a loan fund company has made a loan for which any liability to the company is outstanding (Schedule 1 (3), (4), (5) (c) and (d), (6));
 - (b) to clarify, with retrospective effect, provisions relating to the portion of accumulated losses of a loan fund company to be deducted from the amount otherwise payable by the company in respect of forfeited or surrendered shares and options (Schedule 1 (5) (a) and (b));
 - (c) to enable the Supervisor of Loan Fund Companies to direct a loan fund company to make a distribution from its surplus funds to certain former shareholders (Schedule 1 (7)); and
 - (d) by way of statute law revision (Schedule 1 (2)).
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LOAN FUND COMPANIES (AMENDMENT) BILL, 1982

No. , 1982.

A BILL FOR

An Act to amend the Loan Fund Companies Act, 1976, with respect to the forfeiture or surrender of shares and options and the distribution of the surplus funds of a loan fund company.

[MR WHELAN—1 *April*, 1982.]

Loan Fund Companies (Amendment).

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

5 Short title.

1. This Act may be cited as the "Loan Fund Companies (Amendment) Act, 1982".

Commencement.

2. (1) Except as provided in subsections (2), (3) and (4), this Act shall 10 commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedule 1, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced, as the case may require.

15 (3) Schedule 1 (2) shall be deemed to have commenced on 1st January, 1977.

(4) Schedule 1 (5) (a) and (b) shall be deemed to have commenced on 1st March, 1977.

Principal Act.

20 3. The Loan Fund Companies Act, 1976, is referred to in this Act as the Principal Act.

Amendment of Act No. 94, 1976.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Loan Fund Companies (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3—

- 5 From the matter relating to Part V, omit “47” wherever occurring, insert instead “47A”.

(2) Section 27 (2) (a)—

Omit “or” where firstly occurring, insert instead “of”.

(3) Section 42 (1) (c)—

- 10 Omit the paragraph, insert instead:—

(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,

(4) Section 43 (1) (c)—

- 15 Omit the paragraph, insert instead:—

(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,

(5) (a) Section 46 (1) (a) (iii)—

- 20 Omit “last balance sheet of the company preceding the date on which the amount becomes payable”, insert instead “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”.

Loan Fund Companies (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.****(b) Section 46 (1) (a) (iii)—**

5 Omit “the date to which the balance sheet referred to in this subparagraph is made up”, insert instead “the end of the financial year of the company last preceding the date of the forfeiture or surrender”.

(c) Section 46 (1)—

10 Omit “due until the expiration of a period of 3 years after the date of the forfeiture or surrender or, if any provision of the memorandum or articles of association of the company, or any relevant prospectus, provides for that amount to become due at a date before the expiration of that period, until that date has arrived.”, insert instead:—

15 due—

20 (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

25 (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).

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Loan Fund Companies (Amendment).

SCHEDULE 1—continued.

AMENDMENTS TO THE PRINCIPAL ACT—continued.

(d) Section 46 (4A)—

After section 46 (4), insert:—

- 5 (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
10 (whether or not due for payment) by the company under sub-
section (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).

(6) Section 47 (2)—

15 At the end of section 47, insert:—

(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 en-
titlement (whether or not a loan has been made in respect of the
shares), the vested loan entitlement is extinguished.

20 **(7) Section 47A—**

After section 47, insert:—

Distribution of surplus funds.

47A. (1) Where—

- 25 (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 his lawful
representative an amount referred to in section 46 (1) (a)
(iii) in respect of an accumulated loss; and

Loan Fund Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) the company has, at any time after the forfeiture or surrender, surplus funds,

5 the Supervisor may direct the company to make a distribution, in accordance with this section, out of those surplus funds to the person or his lawful representative.

10 (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—

15 (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.

20 (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);

25 (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).

Loan Fund Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (4) The Supervisor shall not give a direction under subsection (1) to a company unless he 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.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1982

(24c)

LOAN FUND COMPANIES (AMENDMENT) ACT, 1982, No. 58

New South Wales



ANNO TRICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 58, 1982.

An Act to amend the Loan Fund Companies Act, 1976, with respect to the forfeiture or surrender of shares and options and the distribution of the surplus funds of a loan fund company. [Assented to, 12th May, 1982.]

Loan Fund Companies (Amendment).

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

Short title.

1. This Act may be cited as the "Loan Fund Companies (Amendment) Act, 1982".

Commencement.

2. (1) Except as provided in subsections (2), (3) and (4), this Act shall commence on the date of assent to this Act.

(2) Section 5 shall, in its application to a provision of Schedule 1, commence or be deemed to have commenced on the day on which that provision commences or is deemed to have commenced, as the case may require.

(3) Schedule 1 (2) shall be deemed to have commenced on 1st January, 1977.

(4) Schedule 1 (5) (a) and (b) shall be deemed to have commenced on 1st March, 1977.

Principal Act.

3. The Loan Fund Companies Act, 1976, is referred to in this Act as the Principal Act.

Amendment of Act No. 94, 1976.

4. The Principal Act is amended in the manner set forth in Schedule 1.

Loan Fund Companies (Amendment).

SCHEDULE 1.

(Sec. 4.)

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 3—

From the matter relating to Part V, omit “47” wherever occurring, insert instead “47A”.

(2) Section 27 (2) (a)—

Omit “or” where firstly occurring, insert instead “of”.

(3) Section 42 (1) (c)—

Omit the paragraph, insert instead:—

(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,

(4) Section 43 (1) (c)—

Omit the paragraph, insert instead:—

(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,

(5) (a) Section 46 (1) (a) (iii)—

Omit “last balance sheet of the company preceding the date on which the amount becomes payable”, insert instead “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”.

Loan Fund Companies (Amendment).

SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.****(b) Section 46 (1) (a) (iii)—**

Omit “the date to which the balance sheet referred to in this subparagraph is made up”, insert instead “the end of the financial year of the company last preceding the date of the forfeiture or surrender”.

(c) Section 46 (1)—

Omit “due until the expiration of a period of 3 years after the date of the forfeiture or surrender or, if any provision of the memorandum or articles of association of the company, or any relevant prospectus, provides for that amount to become due at a date before the expiration of that period, until that date has arrived.”, insert instead:—

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),

Loan Fund Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 46 (4A)—

After section 46 (4), insert:—

(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).

(6) Section 47 (2)—

At the end of section 47, insert:—

(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.

(7) Section 47A—

After section 47, insert:—

Distribution of surplus funds.

47A. (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 his lawful representative an amount referred to in section 46 (1) (a) (iii) in respect of an accumulated loss; and

Loan Fund Companies (Amendment).

*SCHEDULE 1—continued.**AMENDMENTS TO THE PRINCIPAL ACT—continued.*

- (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 his 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).

Loan Fund Companies (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) The Supervisor shall not give a direction under subsection (1) to a company unless he 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.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 12th May, 1982.*

