Queensland

FINANCIAL INSTITUTIONS LEGISLATION AMENDMENT BILL (No. 2) 1994

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TABLE OF PROVISIONS

1994

A BILL

FOR

An Act to amend the Financial Institutions Code

The Parliament of Queensland enacts—

Short title

Clause **1.** This Act may be cited as the *Financial Institutions Legislation Amendment Act (No. 2) 1994*.

Commencement

Clause **2.** This Act commences on a day to be fixed by proclamation.

Code amended

Clause **3.** This Act amends the Financial Institutions Code set out in section 30 of the *Financial Institutions (Queensland) Act 1992*.

Replacement of Pt 1 (Preliminary), Div 5 (Application of Corporations Law)

Clause **4.** Part 1, Division 5—

omit, insert—

‘***Division 5—Application and adoption of Corporations Law***

‘**Definitions**

‘**64A.** In this Division—

“Corporations Law” includes the Corporations Regulations.

‘**Corporations Law applying under its own force**

‘**65.(1)** The provisions of the Corporations Law (other than the provisions of the Corporations Law mentioned in subsection (2)) are excluded from applying under their own force to financial institutions and the securities of financial institutions.

‘**(2)** However, the following provisions of the Corporations Law are not excluded from applying under their own force—

(a) provisions applying to, or about, the following—

(i) bodies;

(ii) bodies corporate;

(iii) disclosing entities;

(iv) eligible bodies;

(v) persons;

(vi) securities, including securities of a particular type (for example, shares or debentures);

(vii) securities, including securities of a particular type (for example, shares or debentures) of a body corporate;

(b) provisions applying to or about bodies or bodies corporate included in the official list of a securities exchange (including provisions of Chapter 6 (Acquisition of shares) applying to or about a company as defined for that Chapter);

(c) Part 7.11 (Conduct in relation to securities);

(d) Part 7.12 (Offering securities for subscription or purchase);

(e) provisions—

(i) about the interpretation of a provision mentioned in paragraphs (a) to (d) (**“non-excluded Corporations Law provision”**), including a provision defining a word used in the non-excluded Corporations Law provision; or

(ii) vesting power in the Australian Securities Commission, but only to the extent that they vest power for the purposes of a non-excluded Corporations Law provision; or

(iii) empowering a court to make an order (including an order curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Law provision; or

(iv) otherwise about the administration of a non-excluded Corporations Law provision.

‘**(3)** Subsection (2) does not apply provisions of the Corporations Law that would not otherwise apply to financial institutions or the securities of financial institutions.

‘**(4)** Subsections (1) to (3) have effect despite any law of this State prescribed for the purposes of this subsection.

‘**(5)** The expressions used in subsection (2)(a), (b) and (e) have the meanings given by the Corporations Law.

‘**(6)** Subsections (1) to (3) are not intended to affect the operation, as intended under the Corporations Law, of a provision of the Corporations Law expressly excluding a provision of the Corporations Law from having application to financial institutions.

Example of the operation of section 65—

Under section 65, provisions of the Corporations Law that apply to a ‘company’ or a ‘corporation’ do not apply to financial institutions. Therefore, provisions about the duties and liabilities of officers, e.g. section 232 of the Corporations Law, do not apply to officers of financial institutions, who are subject to comparable provisions in this Code. However, section 65 does allow, for example, Part 7.12 of the Corporations Law to apply directly to financial institutions. Part 7.12 applies because under the definition of ‘corporation’ in section 57A of the Corporations Law, a financial institution is a corporation for Part 7.12. Nevertheless, the application of that Part to financial institutions is qualified by section 1083A of the Corporations Law for certain securities.

‘Corporations Law adopted under a regulation

‘**65A.(1)** A regulation may adopt, with or without modification, a provision of the Corporations Law for application to financial institutions or the securities of financial institutions.

‘**(2)** However, a regulation may not adopt a provision of the Corporations Law to the extent that the provision as adopted would be inconsistent with a provision of the financial institutions legislation.

‘**(3)** A regulation made as permitted by this section may create an offence with a maximum penalty of not more than the maximum penalty for the equivalent offence under the Corporations Law.

‘**Adopted provisions of Corporations Law**

‘**65B.(1)** This section applies if a provision of the Corporations Law (the **“adopted provision”**) is adopted for application to financial institutions or the securities of financial institutions, with or without modification, under a provision (the **“adopting provision”**) of this Code (including a regulation permitted by section 65A (Corporations Law adopted under a regulation)).

‘**(2)** Unless the adopting provision otherwise provides, definitions and other interpretation provisions of the Corporations Law relevant to the adopted provision are taken also to be adopted.

‘**(3)** However, each of the following words in the adopted provision has the meaning given in this Code—

- Gazette
- Minister.

‘**(4)** Neither the adopting provision nor the adopted provision gives power to the Australian Securities Commission to administer the adopted provision for this Code.’.

Amendment of s 196 (Substantial shareholding and substantial shareholders)

Clause **5.** Section 196—

insert—

‘**(3)** The purpose of subsections (1) and (2) is to apply Part 6.7 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 (Acquisition of shares) of the Corporations Law.

‘**(4)** However, the application of Part 6.7 of the Corporations Law under subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.’.

Amendment of s 197 (Power to obtain information)

Clause **6.** Section 197—

insert—

‘**(3)** The purpose of subsections (1) and (2) is to apply Part 6.8 of the Corporations Law in its modified form to a society whether or not the society is a listed company under Chapter 6 (Acquisition of shares) of the Corporations Law.

‘**(4)** However, the application of Part 6.8 of the Corporations Law under subsections (1) and (2) is in addition to, and not in substitution for, the application of that Part under its own force.’.

Omission of ss 201–208

Clause **7.** Sections 201 to 208—

omit.

Omission of s 214 (Application of Corporations Law)

Clause **8.** Section 214—

omit.

Insertion of new s 216A

Clause **9.** After section 216—

insert—

‘**Restricted application of this Division**

‘**216A.** This Division does not apply to the extent that its application would be inconsistent with the application under its own force of Part 7.13 (Title to, and transfer of, securities), Division 3 (Transfer of marketable securities and marketable rights) of the Corporations Law.’.

Amendment of s 219 (Loss or destruction of documents)

Clause **10.** Section 219—

insert—

'**(4)** If—

(a) a document of title to shares, debentures or prescribed interests is cancelled under the SCH certificate cancellation provisions; and

(b) having regard to the provisions, the document should not have been cancelled;

this section applies to the document as though it were destroyed on its cancellation.

'**(5)** For subsection (4)—

"SCH certificate cancellation provisions" has the meaning given by section 9 of the Corporations Law.'.

Amendment of s 259 (Register of members)

Clause **11.(1)** Section 259(1), at the end—

insert—

'Maximum penalty—$25 000.'.

(2) Section 259(2), 'Maximum penalty—$25 000.'—

omit.

(3) Section 259—

insert—

'**(6)** If a society's register of members includes the numbers of certificates or other documents evidencing the holdings of its members of shares (if any) allocated to them, nothing in subsections (3) to (5) requires—

(a) a person to be allowed to see the numbers when inspecting the register; or

(b) a copy of the register, or a part of it, sent to a person to contain those numbers.'.

Amendment of s 260 (Register of holders of permanent shares)

Clause **12.** Section 260—

insert—

‘**(6)** Nothing is subsections (3) to (5) requires—

(a) a person to be allowed to see the numbers of the certificates that have been issued evidencing the holding of permanent shares; or

(b) a copy of the register, or part of it, sent to a person to contain those numbers.’.

Insertion of new ss 263A and 263B

Clause **13.** After section 263, in Part 6, Division 3—

insert—

‘**Location of registers on computers**

‘**263A.(1)** This section applies despite anything in this Division to the contrary.

‘**(2)** This section applies if—

(a) a society records, otherwise than in writing, matters (the **“stored matters”**) this Division requires to be contained in a register; and

(b) the record of stored matters is kept at a place (the **“place of storage”**) other than the place (the **“place of inspection”**) where the register is, apart from this section, required to be kept; and

(c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and

(d) the society has served the SSA with a notice—

(i) stating that this section is to apply to—

(A) unless sub-subparagraph (B) applies—the register; or

(B) if the stored matters are only some of the information that is required to be contained in the register—the register and matters that are of the same kind as the stored matters; and

(ii) specifying the situation of the place of storage and the place of inspection.

'**(3)** The society is taken to have complied with the requirements of this Division about the location of the register, but only as far as the register is required to contain the stored matters.

'**(4)** However, if—

(a) the situation of the place of storage or the place of inspection changes; and

(b) the society does not serve notice of the change within 14 days after the change;

this section, as it applies to the society because of the serving of the notice mentioned in subsection (2)(d), ceases to apply at the end of the 14 days.

'Form and evidentiary value of registers

'**263B.(1)** A register that is required by this Division to be kept or prepared may be kept or prepared—

(a) by making entries in a bound or loose-leaf book; or

(b) by recording or storing matters using a mechanical, electronic or other device; or

(c) in another way approved by the SSA.

'**(2)** Subsection (1) does not authorise a register to be kept or prepared by a mechanical, electronic or other device unless—

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or

(b) a reproduction of the matters is kept in written form approved by the SSA.

'**(3)** A society must take all reasonable precautions, including the precautions (if any) prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any register or part of a register required by this Division to be kept or prepared by the society.

‘**(4)** If a society records or stores matters using a mechanical, electronic or other device, a duty imposed by this Division to make a register containing the matters available for inspection or to provide copies of the whole or a part of a register containing the matters is taken to be a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

‘**(5)** A regulation may provide for how up-to-date the information contained in an instrument prepared for subsection (4) must be.

‘**(6)** If—

(a) because of this Code, a register that this Division requires to be kept or prepared is evidence of a matter; and

(b) the register, or part of the register, is kept or prepared by recording or storing matters (including the matter) using a mechanical, electronic or other device;

a written reproduction of the matter as so recorded or stored is evidence of the matter.

‘**(7)** A writing purporting to reproduce a matter recorded or stored using a mechanical, electronic or other device is taken to be a reproduction of the matter unless the contrary is established.’.