



Sydenham Money Club Act 2001

Private Act 2001 No 2
Date of assent 24 October 2001
Commencement see section 2

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Preamble

- (1) The Sydenham Money Club was created in 1882 and registered in 1885 under the Friendly Societies Act 1882:
- (2) On the coming into force of the Friendly Societies and Credit Unions Act 1982, the club was deemed to be registered under that Act:
- (3) The club has not, since its registration under the Friendly Societies and Credit Unions Act 1982, been able to comply with the strict terms of that Act:
- (4) The Friendly Societies and Credit Unions Act 1982 does not permit a credit union to change its status to that of another legal entity (for example, a credit union cannot become registered as a company or as a building society):

- (5) The club wishes to be registered as a building society under the Building Societies Act 1965 with the name “SMC Building Society” and with the initial shares in the society held by the members of the club:
- (6) The registration of the club as a building society may result in the club and the members of the club becoming liable for the payment of taxes and duties:
- (7) It is not appropriate that, on the conversion of the club into a building society, taxes and duties be incurred or be payable solely as a result of a change in the legal status of the club:
- (8) The club wishes to make provision for other matters in connection with its registration as a building society:
- (9) Legislation is the only means by which the club can be registered as a building society conveniently and without the risk of adverse tax and other consequences:
- (10) The objects of this Act can be obtained only by legislation:

The Parliament of New Zealand therefore enacts as follows:

1 Title

This Act is the Sydenham Money Club Act 2001.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

- (1) In this Act, unless the context otherwise requires,—

appointed day means the date stated in the certificate of incorporation issued under section 8

board means,—

- (a) until the appointed day, the directors of the club; and
- (b) on and after the appointed day, the directors of the society

building society means a building society registered under the Building Societies Act 1965

club means the Sydenham Money Club and, where the context requires, its officers

director means,—

- (a) until the appointed day, an officer of the club; and
- (b) on and after the appointed day, a director of the society

instrument includes—

- (a) an instrument (other than this Act) that creates, evidences, modifies, or extinguishes rights, interests, or liabilities or would do so if it or a copy of it were lodged, filed, or registered under any Act; and
- (b) a judgment, order, or process of a court

liabilities means liabilities, debts, charges, duties, and obligations (whether present or future, actual or contingent, or payable or to be observed or performed in New Zealand or elsewhere)

members' call units means that part of the members' fund designated as the members' call units in the accounts of the club, representing the accumulated subscriptions of the members and in respect of which the club pays an amount referred to as a dividend in the accounts of the club

property means real or personal property and includes—

- (a) choses in action and money; and
- (b) goodwill; and
- (c) rights, interests, and claims in or to property, whether arising from or accruing under, or created or evidenced by, or the subject of, an instrument or otherwise, and whether liquidated or unliquidated, actual, contingent, or prospective

Registrar means the Registrar of Building Societies under the Building Societies Act 1965

rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective

rules means the rules approved by the members of the club under section 6

scheme means the scheme for the reconstitution of the club as a building society to be effected under this Act

security—

- (a) means a mortgage, charge (whether legal or equitable), debenture, bill of exchange, promissory note, guarantee, indemnity, defeasance, hypothecation, instrument by way of security, lien, pledge, or other security for the payment of money or for the discharge of any other

- obligation or liability and, whether on demand or not, present or future, actual or contingent; and
- (b) includes an agreement or undertaking to give or execute, whether on demand or not, any of the things referred to in paragraph (a)

society means the club after it has been registered as a building society

undertaking in relation to the club, means the property, rights, and liabilities of the club.

- (2) Depending on the context in which they are used, terms and expressions used, but not defined, in this Act have the same meanings as in the Friendly Societies and Credit Unions Act 1982 or in the Building Societies Act 1965.

4 Act to bind the Crown

This Act binds the Crown and every person whose rights, obligations, and liabilities are affected by this Act.

5 Purpose

The purpose of this Act is to reconstitute the club, at present a credit union under the Friendly Societies and Credit Unions Act 1982, as a building society under the Building Societies Act 1965 with the name “SMC Building Society”.

6 Approval of scheme

- (1) The board may prepare a scheme for approval by the members of the club.
- (2) The board must give 15 working days’ notice of a meeting of members of the club to vote on a special resolution to approve the scheme.
- (3) The notice of meeting must be sent to each member of the club, at the last known address of the member, and be accompanied by—
- (a) an explanation of the scheme and of the proposed rules dealing with the matters that are, in the opinion of the directors, likely to have material significance to the members in their capacity as members; and
- (b) a statement of the manner in which the funds of the club will be allocated and distributed among members of the club; and

- (c) a statement that any member of the club may obtain a full copy of the rules on request; and
 - (d) a statement as to the locations where a copy of the rules can be inspected; and
 - (e) the date on which it is proposed that the scheme will take effect.
- (4) The scheme, including the rules, is approved if the members pass a special resolution approving the scheme under section 82 of the Friendly Societies and Credit Unions Act 1982.

7 Application for registration

- (1) The board may apply to the Registrar to register the club as a building society under the Building Societies Act 1965 with the name “SMC Building Society”.
- (2) The application must—
- (a) be signed by 3 directors of the club; and
 - (b) specify the date on which the board proposes that the scheme take effect.
- (3) The application must be accompanied by—
- (a) the rules of the society that comply with section 17 of the Building Societies Act 1965 and that are approved by the members of the club under section 6; and
 - (b) a certificate signed by not less than 3 directors of the club certifying that the requirements of section 6 have been met; and
 - (c) a copy of the resolution approving the scheme under section 6(4).

8 Reconstitution of club as building society

- (1) As soon as practicable after receiving an application that complies with section 7, the Registrar must—
- (a) register the application and accompanying documents; and
 - (b) issue a certificate of incorporation for the society with the name “SMC Building Society”.
- (2) The certificate must state, as the date of incorporation of the society, the later of—
- (a) the date specified in the application as the date on which the board proposes that the scheme take effect; or
 - (b) the date on which application is made to the Registrar.

- (3) On and after the date stated in the certificate of incorporation,—
- (a) the club ceases to be a credit union registered under the Friendly Societies and Credit Unions Act 1962; and
 - (b) the club is a building society registered under the Building Societies Act 1965; and
 - (c) the Building Societies Act 1965, except section 29, applies to the society.
- (4) The Registrar must, as soon as practicable after issuing the certificate of incorporation, send a copy of the certificate to the Registrar of Friendly Societies and Credit Unions.
- (5) The Registrar of Friendly Societies and Credit Unions must, on receiving the copy of the certificate, cancel the registration of the club as a credit union under the Friendly Societies and Credit Unions Act 1982.

9 Structure of society

On the appointed day,—

- (a) the subscribed capital of the society is represented by shares in the society that are deemed to have been issued, in the manner provided in the scheme, to every person who was a member of the club immediately before the appointed day; and
- (b) the rules of the society are the rules that are approved under section 6; and
- (c) the directors of the society hold office on the terms and conditions set out in the rules; and
- (d) the directors of the society are the directors of the club who held office immediately before the appointed day.

10 Undertaking of club belongs to society

On the appointed day, the undertaking of the club belongs to, and vests in, the society.

11 Relationship with depositors

- (1) The relationship between the club and a member in the member's capacity as a depositor or investor becomes, on and after the appointed day, the same relationship between the society and a member in the same capacity.
- (2) The same rights and liabilities, including rights of set-off, continue to exist between the society and a member as existed

between the club and the member immediately before the appointed day.

12 Status of contracts and other instruments

- (1) This section applies to the following instruments, namely, contracts, agreements, guarantees, conveyances, deeds, leases, licences, and other instruments, undertakings, and notices (whether in writing or not) entered into by, made with, given to or by, or addressed to the club (whether alone or with another person) before the appointed day and subsisting immediately before the appointed day.
- (2) The instruments to which this section applies are, on and after the appointed day, binding on, and enforceable by, against, or in favour of, the society as if the society and not the club had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed.

13 Status of securities

- (1) A security held by the club as security for a debt or other liability to the club incurred before the appointed day is, on and after the appointed day, available to the society as security for the discharge of that debt or liability. If the security extends to future or prospective debts or liabilities, it is available as security for the discharge of debts or liabilities to the society incurred on or after the appointed day.
- (2) The society is entitled to the same rights and priorities and is subject to the same liabilities in relation to the security as the club.

14 References to society in existing instruments

A reference (express or implied) to the club in an instrument made, given, passed, or executed before the appointed day must, on and after the appointed day, be read as a reference to the society.

15 Continuation of proceedings

- (1) An action, arbitration, proceeding, or a cause of action that was pending or that existed by, against, or in favour of the club or to which the club was a party before the appointed day

may, on and after the appointed day, be continued and enforced by, against, or in favour of, the society.

- (2) It is not necessary to amend an application, notice, or other document to continue the action, arbitration, proceeding, or cause of action.

16 Effect of this Act

Nothing in this Act, and nothing done under this Act,—

- (a) places the club, the society, or any other person in breach of contract or confidence, or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel a contract or arrangement or to accelerate the performance of an obligation; or
- (c) places the club, the society, or any other person in breach of an enactment, a rule of law, or a provision of a contract that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or
- (d) releases a surety from an obligation; or
- (e) invalidates or discharges a contract or security.

17 Employees

- (1) On and after the appointed day, each employee of the club is an employee of the society.
- (2) For the purposes of any enactment, rule of law, contract, or agreement relating to an employee, the contract of employment of the employee is unbroken and a period of service with the club must be treated as a period of service with the society.
- (3) The terms and conditions of employment of the employee are the same as the terms and conditions of his or her employment with the club immediately before the appointed day, but they may be varied in the same manner.
- (4) An employee is not entitled to receive a payment or other benefit because the employee has, as a result of this Act, ceased to be an employee of the club.
- (5) This section applies despite anything else in this Act.

18 Taxes and duties

- (1) On and after the appointed day, the Society is the same legal entity as the Club for the purposes of the Acts specified in the Schedule of the Tax Administration Act 1994.
- (2) Shares issued to members on the appointed day in accordance with the scheme are shares of the same class, within the meaning of that expression in section OB 1 of the Income Tax Act 1994.
- (3) For the purposes of the definition of **available subscribed capital** in section OB 1 of the Income Tax Act 1994, the club is deemed to have received an aggregate amount of consideration, in respect of shares issued to members on the appointed day in accordance with the scheme, equal to the aggregate amount of the members' call units on the appointed day.

19 Financial reporting

- (1) The society must comply with sections 90 to 97A of the Building Societies Act 1965 and with the Financial Reporting Act 1993 for the financial year ending with the close of 31 December 2001 as if the society and the club were the same legal entity during that period.
- (2) Nothing in sections 119 to 129 of the Friendly Societies and Credit Unions Act 1982 applies to the society or the club on and after the appointed day.
- (3) Subsections (1) and (2) do not limit section 8.

20 Registers

- (1) Subsection (2) applies to an instrument, whether or not it comprises an instrument of transfer,—
 - (a) executed or purporting to be executed by the society; and
 - (b) relating to any property held immediately before the appointed day by the club; and
 - (c) containing a recital that the property has become vested in the society under this Act.
- (2) The presentation to a Registrar or another person of an instrument to which this subsection applies is, in the absence of evidence to the contrary, sufficient evidence that the property is vested in the society.

- (3) A director of the society may sign a certificate stating that a security issued by a person or any rights or interests in property of a person have, under this Act, vested in the society.
- (4) On presentation of the certificate to the person named in it, the person must register, or authorise the registration of, the society as the holder of that security or as the person entitled to the rights or interests.
- (5) In subsection (3), **security** has the same meaning as in section 2(1) of the Securities Act 1978.
- (6) Apart from this section, this Act does not affect the application of the Land Transfer Act 1952.

21 Validations

- (1) Despite section 106(1) of the Friendly Societies and Credit Unions Act 1982,—
 - (a) persons are and have always been entitled to be members of the club even though those persons are or were not individuals:
 - (b) every act of the club or of an officer of the club on and after 1 April 1983 is, and has always been, lawful even though persons, other than individuals, are or have been members of the club.
- (2) Despite section 106(3) of the Friendly Societies and Credit Unions Act 1982,—
 - (a) an interest of a member of the club or any claim to an interest by a member of the club in the shares of the club, whether before or after the coming into force of this Act, is, and has always been, lawful even though the amount of the interest exceeds or exceeded the amount stated in or declared under that subsection:
 - (b) every act of the club or of an officer of the club on and after 1 April 1983 is, and has always been, lawful even though the amount of an interest of a member of the club or a claim of a member of the club in the shares of the club exceeded the amount stated in or declared under that subsection.
- (3) Despite sections 108 and 109 of the Friendly Societies and Credit Unions Act 1982,—
 - (a) every deposit or loan made to the club is, and has always been, lawfully made even though the deposit or

loan was made by a person who was not a member of the club:

- (b) every act of the club or of an officer of the club on and after 1 April 1983 is, and has always been, lawful even though a deposit or loan was made to the club by a person who was not a member of the club.

Legislative history

29 March 2001	Introduction (Bill 114–1)
2 May 2001	First reading and referral to Commerce Committee
22 August 2001	Reported from Commerce Committee (Bill 114–2)
3 October 2001	Second reading
17 October 2001	Committee of the whole House, third reading
24 October 2001	Royal assent
