



FOURTH DRAFT

DRAFT PROPOSALS UNDER THE SECURITIES ACT 1978
FOR REGULATIONS RELATING TO CONTRIBUTORY MORTGAGES

Draft incorporates
amendments adopted by
The Securities Commission
at its meeting
on 20 December 1984.

THE SECURITIES ACT (CONTRIBUTORY MORTGAGE) REGULATIONS 1984

<u>ANALYSIS</u>	<u>PAGE</u>
1. Title and Commencement	1
2. Interpretation	1
3. Development Mortgage Defined	9
4. Application of these Regulations to Solicitors [Deferred]	10
5. Saving	10
<u>Registrar to maintain Register</u>	
6. Registrar to maintain Register of Documents	11
<u>Registration of Brokers and other requirements relating to Brokers</u>	
7. Brokers to be registered	12
8. Application for registration as a Broker	12
9. Registration of Brokers	13
<u>Annual Reports</u>	
10. Annual Reports to be delivered to Registrar	14
11. Registration of Annual Reports	15
<u>Changes in Information Supplied by Brokers</u>	
12. Notification of Changes in Information Previously Supplied	16
<u>Suspension and Revocation of Registration</u>	
13. Suspension and Revocation of Registration	17
<u>Nominee Companies</u>	
14. Restrictions on Business carried on by Nominee Companies	18
<u>Trust Accounts</u>	
15. Trust Accounts	20

Contributions and Repayments to be Held in Trust Accounts

16. Mortgage contributions and repayments to be Held in Trust Account	21
17. Restrictions on Distribution of Contributions to Mortgagor or Vendor of Mortgage Interest	24
18. Further Restrictions on Distribution of Contributions to Mortgagor or Vendor of Mortgage Interest	26
19. Information to be given to Contributors where Advances made to Mortgagor pursuant to General Authority	29

Duties of Brokers

20. Offers to the Public of Interests in Contributory Mortgages	30
21. Contributory Mortgages to be in Name of Contributor or Nominee Company	31
22. Registration and Custody of Contributory Mortgages	31
23. Duty of Broker to Ensure Continuing Management of Contributory Mortgages	31
24. Restriction of Transfer of Nominee Mortgages	34
25. Restrictions on Creation of Prior Charges and Discharges of Nominee Mortgages	35
26. Default by Mortgagor	36
27. Broker to Furnish Names of Contributors	37
28. Meetings of Contributors	37
29. No Contracting Out	39

Accounting Records and Audits

30. Brokers to Keep Register and Accounting Records	40
31. Auditors	41

	<u>PAGE</u>
<u>Miscellaneous</u>	
32. Persons to whom Notice to be given by Broker	44
33. Offences	44
34. Transitional Provisions	44
<u>FIRST SCHEDULE</u>	
Form of Memorandum of Association of Nominee Company	46
<u>SECOND SCHEDULE</u>	
Form of Articles of Association of Nominee Company	48
<u>THIRD SCHEDULE</u>	
Consent of Auditor	55
<u>FOURTH SCHEDULE</u>	
Information to be Contained in Application for Registration as a Broker	56
<u>FIFTH SCHEDULE</u>	
Documents and Certificates to be attached to Application for Registration as a Broker	57
<u>SIXTH SCHEDULE</u>	
Information to be Contained in Annual Report of Broker	60
<u>SEVENTH SCHEDULE</u>	
Documents and Certificates to be attached to Annual Report of a Broker	64
<u>EIGHTH SCHEDULE</u>	
Form of General Authority for Investment on First Mortgage	64
<u>NINTH SCHEDULE</u>	
Form of Special Authority for Investment on Mortgage	68
<u>TENTH SCHEDULE</u>	
Information to be given to Contributor in Respect of Development Mortgage	72

ELEVENTH SCHEDULE

Information to be given to Contributor in
Respect of Mortgage other than Development
Mortgage 78

TWELFTH SCHEDULE

Information and Other Matters to be
Contained in Valuation Report 83

1 February 1985

1. Title and commencement - (1) These regulations may be cited as the Securities Act (Contributory Mortgage) Regulations 1984.

(2) These regulations shall come into force on

2. Interpretation - (1) In these regulations, unless the context otherwise requires, -

"The Act" means the Securities Act 1978:

"Auditor" means a qualified auditor:

"Broker" means a contributory mortgage broker:

"Capital value" of land has the same meaning as in the Valuation of Land Act 1951:

"Commission" means the Securities Commission established by the Act:

"Company" has the same meaning as in the Companies Act 1955:

"Contribution" means money paid by any person, other than a contributory mortgage broker, for the purpose of obtaining, or that is used to obtain, an interest in a contributory mortgage:

"Contributor" means -

(a) A person who makes a contribution; and

(b) A person who holds an interest in a contributory mortgage:

"Contributory mortgage" means a mortgage of land that -

(a) Secures money owing to 2 or more persons or to a nominee on behalf of 2 or more persons, whether or not the mortgage originally secured money owing to only one person; or

(b) Has the same priority in respect of the land as another mortgage or mortgages of that land; - and, for the purposes of this definition, money owing to not more than 5 persons as joint tenants shall be deemed to be owed to one person:

"Contributory mortgage broker" means a person (not being a mortgagor under the mortgage or any other person to whom or for whose benefit any money is lent in consideration for the mortgage given by the mortgagor) who -

(a) Offers an interest in a contributory mortgage to the public for subscription; or

(b) Manages interests in a contributory mortgage, being interests that have been offered to the public for subscription, whether or not that person holds beneficially any interest in that mortgage:

"Development mortgage" has the meaning assigned to it by regulation 3 of these regulations:

"Finance rate" has the same meaning as in the Credit Contracts Act 1981:

"Government valuation" in relation to any land means the capital value of the land set forth in a district valuation roll or supplementary roll, as the case may be, in accordance with the Valuation of Land Act 1951:

"Immediate relative" in relation to any person, means any spouse of that person, or any parent, brother, sister, or child of the person or spouse:

"Improvements" has the same meaning as in the Valuation of Land Act 1951:

"Interest in a contributory mortgage" means an interest in, or right to receive, the whole or part of any moneys secured by a contributory mortgage:

"Land value" has the same meaning as in the Valuation of Land Act 1951:

"Mortgagor" in relation to a contributory mortgage means -

(a) The proprietor of any estate or interest in land charged with the contributory mortgage; and

(b) Any other person to whom, or for whose benefit, money is paid in consideration for the

contributory mortgage given by the proprietor of any estate or interest in land, and whose obligation to repay is secured by that contributory mortgage:

"Nominee company", in relation to a broker, means a company -

(a) That has a memorandum of association in the form set out in the First Schedule to these regulations; and

(b) That has articles of association in the form set out in the Second Schedule to these regulations; and

(c) That has a name that has a recognisable connection with the broker and ends with the words "Nominee Company Limited" or, in the case of a nominee company in existence at the date of commencement of these regulations, such other name as the Commission may approve; and

(d) All the shares in which are held by or on behalf of the broker:

"Nominee mortgage" means a contributory mortgage held in the name of a nominee company as a mortgagee:

"Principal sum" in relation to a contributory mortgage means the amount of credit (as that term is defined

in the Credit Contracts Act 1981) secured by the contributory mortgage:

"Proprietor" means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy:

"Qualified auditor" means a member of the New Zealand Society of Accountants who holds a certificate of public practice, the Audit Office, or a member, fellow, or associate of an association of accountants constituted outside New Zealand who is for the time being approved for the purpose of this Act by the Minister by notice in the Gazette:

Provided that -

(a) None of the following persons shall be qualified for appointment as auditor of the accounting or other records of a contributory mortgage broker:

(i) The contributory mortgage broker, or a principal officer, officer, or employee of the contributory mortgage broker:

(ii) A person who is a partner of or in the employment of a person specified in subparagraph (i) of this paragraph:

(iii) A body corporate:

(b) A person shall not be qualified for appointment as auditor of a contributory mortgage broker if he is by virtue of paragraph (a) of this proviso, disqualified for appointment as auditor of any person that is the contributory mortgage broker's subsidiary or holding company or a subsidiary of the contributory mortgage broker's holding company, or would be so disqualified if that person were a company:

"Registered valuer" means a person who is a registered valuer within the meaning of the Valuers Act 1948:

"Registrar" means the Registrar of Companies:

"Solicitor" has the same meaning as in the Law Practitioners Act 1982:

"Trading bank" has the same meaning as in the Reserve Bank of New Zealand Act 1964:

"Trust account" means a trust account of a broker's nominee company:

"Valuation report" means a valuation report prepared by a registered valuer, but does not include a valuation report in relation to land which is or is to be charged as security for a contributory mortgage if -

(a) The registered valuer and any broker who offers interests in that mortgage to the public for subscription are associated persons; or

(b) The registered valuer and any person who is, or is to be, a mortgagor under that mortgage are associated persons; or

(c) The registered valuer, or any person employed by the registered valuer is, or at any time within 1 year of the preparation of the valuation report has been, an employee or partner of -

(i) Any broker who offers interests in that mortgage to the public for subscription other than, in the case of an employee, a broker which is a trustee company within the meaning of the Trustee Company Act 1967; or

(ii) Any person who is, or is to be, a mortgagor under that mortgage; or

(d) Any payment to the registered valuer in connection with the preparation of that valuation report is conditional, either in whole or in part, upon the subscription of interests in the mortgage.

(2) In these regulations a person is associated with another person, if -

(a) The persons are immediate relatives; or

(b) The persons are related bodies corporate; or

(c) It is a body corporate that is managed or controlled by the other person or by any immediate relative or related body corporate of the other person (or by any one or more of them acting together); or

(d) It is a body corporate, and the aggregate amount of equity securities issued by it and held by the other person, or any immediate relative or related body corporate of the other person, is not less than one fifth of all equity securities issued by that body corporate; -

and "associated person" has a corresponding meaning.

(3) In these regulations, a body corporate is related to another body corporate if -

(a) The other body is its holding company or subsidiary; or

(b) There is another body corporate to which both bodies are related by virtue of paragraph (a) of this subclause, -

and "related body corporate" has a corresponding meaning.

(4) In these regulations, contributions of a contributor which are credited to the account of a mortgagor under an existing contributory mortgage for the purpose of repaying, whether directly or indirectly, the contributions

of another contributor, shall be deemed to be contributions which are paid to a vendor of an interest in a contributory mortgage.

(5) Where any term or expression used in these regulations is not defined in these regulations but is defined in the Act, that term or expression shall, unless the context otherwise requires, have, in these regulations, the meaning given to it by the Act.

3. Development mortgage defined - (1) For the purposes of these regulations "development mortgage" means a contributory mortgage secured by a charge over land that is being, or is intended to be subdivided or improved or on which buildings or other improvements are being, or are intended to be, erected, or altered, or developed where:

(a) The mortgagor is required to apply the whole or part of the principal sum secured, or to be secured by the mortgage towards the costs of subdividing or improving the land, or erecting, or altering, or developing any buildings or other improvements on the land, as the case may be; and

(b) The amount of the principal sum secured or to be secured, by the mortgage, or the aggregate amount of the principal sums secured or intended to be secured by the mortgage and any other mortgages ranking or intended to rank

prior to or equally therewith, exceeds two-thirds of the capital value of the land as set forth in a valuation report, made not more than 4 months before the date of the mortgage, that contains the information and other matters specified in the Twelfth Schedule to these Regulations; and

- (c) The cost of subdividing or improving the land, or creating or altering, or developing any buildings or other improvements on the land, as the case may be, exceeds 5% of the capital value of the land as set forth in the valuation.

(2) For the purposes of subclause (1) of this regulation, where it is intended that any buildings or other improvements existing on any such land be removed or demolished, the capital value of the land is the capital value so determined less the value of any such buildings or improvements and the costs of removal or demolition as assessed by a registered valuer.

4. Application of these regulations to solicitors - Nothing in these Regulations applies to anything done or omitted to be done by a solicitor in his practice as a solicitor.

5. Saving - Nothing in these regulations limits the Securities Regulations 1983.

Registrar to maintain Register

6. Registrar to maintain register of documents -

(1) The Registrar shall keep in his office a register of all documents required to be registered under these regulations.

(2) The register kept under subclause (1) of this regulation shall be open to inspection by any person on payment of such fees as may be prescribed.

(3) Any person may on payment of the prescribed fee obtain a copy of or an extract from any document or any part of a document registered under these regulations.

(4) Whenever any act is required by these regulations to be done to or by the Registrar, it shall unless the context otherwise requires, be done to or by the District Registrar of Companies at Wellington.

Registration of Brokers
and other requirements relating to Brokers

7. Brokers to be registered - (1) No person shall act as a broker unless -

- (a) That person is registered as a broker with the Registrar in accordance with these regulations; and
- (b) An auditor has consented to act as his auditor in the form contained in the Third Schedule to these regulations; and
- (c) The auditor referred to in paragraph (b) of this regulation acts as the auditor for that person; and
- (d) A nominee company carries on business or has been formed to carry on business for that person as the nominee company of that person; and
- (e) The nominee company maintains a trust account at a trading bank.

(2) No person shall act as a broker if he holds, otherwise than as an executor or administrator of the estate of a broker, or is beneficially entitled to shares in more than one nominee company.

8. Application for registration as a broker - Every application for registration as a broker shall -

- (a) Be dated; and
- (b) Be signed by the applicant, or where the applicant is a body corporate or other body, by every director thereof; and
- (c) Contain all of the information specified in the Fourth Schedule to these regulations; and
- (d) Have attached thereto all of the documents and certificates specified in the Fifth Schedule to these regulations; and
- (e) Be accompanied by payment of the prescribed fee.

9. Registration of brokers -

The Registrar shall forthwith register as a broker every person who delivers to him an application that complies with regulation 8 of these regulations.

Annual Reports

10. Annual reports to be delivered to Registrar -

(1) Every broker shall deliver an annual report to the Registrar in accordance with these regulations.

(2) Every annual report shall -

(a) Be dated; and

(b) Be signed by the broker, or where the broker is a body corporate, by every director thereof or by two directors signing on behalf of all directors, or by one director signing on behalf of all directors and by the secretary thereof; and

(c) Contain all of the information specified in the Sixth Schedule to these regulations; and

(d) Have attached thereto all the documents and certificates specified in the Seventh Schedule to these regulations.

(3) Subject to subclause (4) of this regulation, every annual report shall be delivered to the Registrar -

(a) In the case of a broker who is an individual, not later than the 31st day of May in each year; and

(b) In the case of a broker who is not an individual, within 3 months after the end of the broker's

financial year.

(4) A broker is not required to deliver an annual report in the calendar year in which he is first registered as a broker.

11. Registration of annual reports -

The Registrar shall forthwith register every annual report that complies with regulation 10 of these regulations.

Changes in Information Supplied by Brokers

12. Notification of changes in information previously supplied - (1) Every broker shall notify the Registrar of any alteration in the information specified in the Fourth Schedule to these regulations and contained in the application for registration previously made by the broker pursuant to regulation 8 of these regulations.

(2) Every broker shall notify the Registrar of any alteration in the information specified in the Sixth Schedule to these regulations and contained in the latest annual report previously delivered by the broker pursuant to regulation 10 of these regulations.

(3) Notification required under subclauses (1) and (2) of this regulation shall be given -

(a) In writing and be dated and signed by the broker, or where the broker is a body corporate or other body, by every director thereof or by two directors signing on behalf of all directors, or by one director signing on behalf of all directors and by the secretary thereof; and

(b) Within 30 days after the alteration occurs.

Suspension and Revocation of Registration

13. Suspension and revocation of registration - (1)
Where the Commission makes an order under section 44B(2)(a) of the Act, the Registrar shall upon receiving a copy of that order under the seal of the Commission, suspend the registration of the broker named in the order for such period of time as is specified in the order.

(2) Where the Commission makes an order under section 44B(2)(b) of the Act, the Registrar shall upon receiving a copy of that order under the seal of the Commission, revoke the registration of the broker named in the order.

(3) Where a broker fails to comply with the requirements of regulation 10 or regulation 12 of these regulations, the Registrar may, on giving not less than 14 days written notice to the broker, suspend the registration of the broker until the broker complies with those requirements.

Nominee Companies

14. Restrictions on business carried on by nominee companies - (1) Notwithstanding section 15A of the Companies Act 1955 and notwithstanding anything contained in its Memorandum or Articles of Association, no nominee company shall carry on any business or do any act, matter or thing except in accordance with or incidental to the following objects:

- (a) To act as a nominee company holding mortgages charges debentures instruments by way of security and securities of all kinds (whether contributory or otherwise) or any interest therein upon a bare trust for the legal or beneficial owner or owners thereof and as such nominee to lend moneys:
- (b) On behalf of the beneficial owner or owners to exercise and enforce all and any powers, remedies or benefits conferred by or attaching to or resulting from or incidental to or consequent upon the holding of any such security or interest therein:
- (c) On behalf of the beneficial owner or owners to buy in at the sale pursuant to any power of sale conferred by any mortgage charge or other security affecting any land charged by the contributory mortgage in which such beneficial owner or owners have an interest and to resell

such land or any part or parts thereof by public auction, private contract or otherwise and pending such resale to exercise all or any of the rights and powers of an owner and pay and discharge rates and other outgoings in respect thereof and generally manage the same.

- (d) On behalf of the beneficial owner or owners to execute and give all such variations, discharges, transfers, instruments, acknowledgments and other documents and perform all such acts and things as may be required in respect of any security or interest therein held by the Company:

(2) No broker shall cause or permit the nominee company of that broker to carry on any business or do any act, matter or thing except in accordance with or incidental to the objects specified in subclause (1) of this regulation.

Trust Accounts

15. Trust accounts - (1) A broker shall not cause or permit his nominee company's trust account -

(a) To be overdrawn; or

(b) To be used for any purposes other than those of receiving, holding, and disbursing contributions and payments of principal and interest and other moneys received on behalf of contributors.

(2) A broker shall not permit the account of any person in the trust account of that broker's nominee company to be overdrawn.

(3) A broker shall not permit any account in the trust account of that broker's nominee company to be opened for a contributor in a name which he believes, or has reason to believe, is not the true or commonly used name of that contributor unless he is satisfied on reasonable grounds (of which the burden of proof shall be upon the broker) that there is a lawful reason for so doing.

(4) Where any account in the trust account of a broker's nominee company is opened for a contributor in a name which the broker knows is not a true or commonly used name of that contributor, the account shall be clearly marked in its title under the name assumed or adopted by the contributor for the purpose of that account as well as the true or commonly used name of that contributor.

Contributions and Repayments to be
Held in Trust Account

16. Mortgage contributions and repayments to be held in trust account - (1) Every broker shall ensure that any contribution paid to him or to his nominee company by any person is forthwith paid into the trust account of that broker's nominee company.

(2) Subject to subclauses (3), (4) and (8) of this regulation, contributions paid into the trust account of the broker's nominee company shall be held in trust for the contributor pending -

(a) Payment to or on behalf of the mortgagor or the vendor of an interest in a contributory mortgage, as the case may be; or

(b) Repayment to the contributor.

(3) A contribution may, pending payment to or on behalf of the mortgagor, or the vendor of an interest in a contributory mortgage, be invested by the broker on behalf of the contributor in any investment if -

(a) The authority signed by the contributor authorises the broker to invest the money in that particular investment; and

(b) The investment is made either in the name of the contributor or in the name of the broker's

nominee company as trustee for the contributor.

(4) Subject to subclause (8) of this regulation, every broker shall ensure that any contribution held in the trust account of his nominee company or invested pursuant to subclause (3) of this regulation, as the case may be, for more than 60 days, is repaid to the contributor forthwith after receipt by the broker of a request for repayment by the contributor.

(5) Subject to subclause (6), (7) and (8) of this regulation, every broker shall ensure that -

(a) Every payment of interest, repayment of principal and other money received by him or his nominee company from a mortgagor under a mortgage in respect of which he acts as broker; and

(b) All money received by him or his nominee company as consideration for a transfer of any interest in a contributory mortgage in respect of which he acts as broker (not being an interest being transferred by him), -

is immediately paid into the trust account of his nominee company and is forthwith thereafter paid to the persons entitled thereto.

(6) Any money referred to in subclause (5) (a) or (b) of this regulation may be applied by the broker in

reimbursement of any payment made by the broker for or on behalf of the contributor.

(7) Money held in the trust account of a broker's nominee company pursuant to subclause (5) of this regulation may be retained in that trust account if -

- (a) The contributor entitled to the money gives a general or special authority to the broker which authorises the money to be applied as a contribution to any other contributory mortgage; and
- (b) The broker gives notice in writing, forthwith upon receipt of the money, to the contributor entitled to the money that the money is held in the trust account in accordance with the general or special authority given by the contributor; and
- (c) The money is held in the trust account in accordance with the general or special authority.

(8) Notwithstanding anything contained in this regulation, money held in the trust account of a broker's nominee company may be paid to the broker or any other person if -

- (a) The contributor gives written authority to the broker specifying the amount of the payments and the person to whom they may be made; and

- (b) The payments are made in accordance with that authority.

17. Restrictions on distribution of contributions to mortgagor or vendor of mortgage interest - (1) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as broker unless -

- (a) The contributions are paid or applied in accordance with a general authority; or

- (b) The contributions are paid or applied in accordance with a special authority.

(2) Every general authority shall be in the form set out in the Eighth Schedule to these regulations and shall be dated, properly completed and signed by the contributor.

(3) A general authority may not authorise investment in a development mortgage.

(4) Every special authority shall be in the form set out in the Ninth Schedule to these regulations and shall be dated, properly completed and signed by the contributor.

(5) Before any money is paid or applied in accordance with a special authority authorising investment in a development mortgage the broker shall ensure that the contributor has been sent or given -

(a) A document or documents each signed by the broker containing the information and other matters specified in the Tenth Schedule to these regulations; and

(b) A written valuation report with respect to the land charged as security for the mortgage that contains the information and other matters specified in the Twelfth Schedule to these regulations.

(6) Before any money is paid or applied in accordance with a special authority authorising investment in a mortgage not being a development mortgage, the broker shall ensure that the contributor has been sent or given -

(a) A document or documents signed by the broker containing the information and other matters specified in the Eleventh Schedule to these regulations; and

(b) A written valuation report with respect to the land charged as security for the mortgage that contains the information and other matters specified in the Twelfth Schedule to these regulations.

(7) Nothing in paragraph (b) of subclause 6 of this regulation applies where the broker is satisfied, on reasonable grounds, that -

- (a) The aggregate of the principal sum secured by the mortgage and the amount of all charges ranking ahead or equally therewith does not exceed two-thirds of the value of the land to be charged by the mortgage; and
- (b) It is unnecessary for the protection of the contributor to obtain a valuation report with respect to the land charged as security for the mortgage; and
- (c) The document or documents referred to in paragraph (a) of subclause (6) of this regulation contain a statement to this effect.

18. Further restrictions on distribution of contributions to mortgagor or vendor of mortgage interest -

(1) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as a broker if -

- (a) At the time of the payment the broker knows or ought to know that any document received by any contributor to that mortgage pursuant to regulation 17(5)(a) or 17(6)(a), as the case may be, or regulation 19 of these regulations is:

- (i) False or misleading in a material particular (whether or not the statement

became so misleading as a result of a change of circumstances occurring after the statement was given to the contributor); or

(ii) Inconsistent with the mortgage; or

(b) After that payment the principal sum secured by the mortgage would exceed the amount specified in any special authority given by the contributor or in the mortgage, as the case may be, as the principal sum of the mortgage; or

(c) The date when the final balance of the principal sum is due and payable under the mortgage is later than any date specified in any special authority given by any contributor to that mortgage as the date for repayment of contributions to that contributor.

(2) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as a broker unless he believes on reasonable grounds that -

(a) The mortgage, executed by the mortgagor and in a form that is registrable under the Land Transfer Act 1952, has been received by the broker or a solicitor acting on his behalf; and

(b) All buildings and improvements situated upon the property which is charged with the mortgage, are insured to the full insurable value thereof, against loss or damage by fire and other extraneous perils by an insurance office in New Zealand approved by the broker, and the policy of insurance names the broker's nominee company or all of the contributors to the mortgage, as the case may be, as loss payees thereunder.

(3) Where the mortgage is a development mortgage which provides that the principal sum is to be paid to the mortgagor in instalments, no instalment shall be paid unless -

(a) There are, at the time of payment, in the trust account of the broker's nominee company, or in investments made pursuant to regulation 16(3) of these regulations, contributions made by contributors to that mortgage which equal in aggregate a sum equal to the amount of the principal sum of the mortgage less the amount of any instalments which have previously been paid or applied; and

(b) A written valuation report has been obtained; and

(c) The total amount advanced under the mortgage does not at any time exceed the amount certified by the registered valuer as suitable for an advance; and

- (d) The balance of the principal sum not yet advanced is adequate to complete the development on the basis of the registered valuer's report.

19. Information to be given to contributor where advances made to mortgagor pursuant to general authority - Not later than 7 days after any contribution is paid or credited in accordance with a general authority pursuant to regulation 17(1)(a) of these regulations, the broker shall send or give to the contributor a document or documents each signed by the broker which together contain the following information and other matters concerning the contributory mortgage in respect of which his contributions have been paid or credited -

- (a) The amount of money paid; and
- (b) A written valuation report with respect to the land charged as security for the mortgage that contains the information and other matters specified in the Twelfth Schedule to these regulations; and
- (c) The information and other matters specified in the Eleventh Schedule to these regulations.

Duties of Brokers

20. Offers to the public of interests in contributory mortgages - (1) No broker shall offer an interest in a contributory mortgage to the public unless the broker, after proper enquiry, is satisfied on reasonable grounds -

(a) Of the ability of the proposed mortgagor to pay the interest and in the case of contributory mortgages repayable by instalments of principle, those instalments, as they fall due under the mortgage at the rate applicable at the date of the offer; and

(b) Of the financial standing of any proposed guarantor at the date of the offer.

(2) A broker shall be under a duty to take all reasonable steps to ensure -

(a) That mortgages in respect of which he has acted as broker are registered at the earliest practicable date; and

(b) That the interests of contributors to the mortgage are protected if registration of the mortgage is delayed for any reason.

(3) It shall be the duty of a broker to discharge on behalf of contributors any duties under the Credit Contracts Act 1981.

21. Contributory mortgages to be in name of contributor or nominee company - It is the duty of every broker to ensure that every contributory mortgage in respect of which he acts as broker states -

(a) If the mortgage is to be a nominee mortgage, the name of the broker's nominee company as mortgagee; or

(b) If the mortgage is to be in the name of the contributors, the names of all the contributors to that mortgage as mortgagees.

22. Registration and custody of contributory mortgages - (1) Every broker shall ensure, in respect of every contributory mortgage for which he acts as broker, that -

(a) The mortgage, any collateral securities, and, where the mortgage is a first mortgage, the certificate of title to the land charged and any policies of insurance are at all times safely held on behalf of the contributors; and

(b) The authorities relating to the investment of contributors in the mortgage and copies of the disclosure information provided to investors are filed or maintained so as to be readily available for inspection by the broker's auditor.

23. Duty of broker to ensure continuing management of contributory mortgages - (1) This regulation applies to -

(a) A broker:

(b) The personal representatives of an individual who, at the time of his death, was a broker.

(2) Subject to the Act and these regulations, no person to whom this regulation applies shall cease to act as a broker in respect of any contributory mortgage unless -

(a) In the case of a nominee mortgage -

(i) Another person who is registered under these regulations as a broker has agreed to act as broker in respect of the management of the mortgage; and

(ii) All of the contributors having an interest in the mortgage agree in writing to the appointment of that person to act as broker in respect of the mortgage; and

(iii) That person delivers to the person so appointed everything in his possession or control, or in the possession or control of his nominee company, relating to the mortgage including, without limitation -

(A) (The mortgage, any collateral securities, and where the mortgage is a first mortgage the certificate of title to the land charged and any policies of insurance; and

(B) The authorities relating to the investment of contributions to the mortgage and copies of the disclosure information provided to contributors; and

(C) Any money held in the trust account of the broker's nominee company on behalf of the contributors to the mortgage; and

(iv) That person delivers to the person so appointed a memorandum of transfer (registrable under the Land Transfer Act 1952) transferring the interest of the broker's nominee company to the nominee company of the person so appointed;

or

(b) In the case of a mortgage not being a nominee mortgage -

(i) All of the contributors having an interest in the mortgage agree in writing that that person is no longer required to collect moneys payable to them under the mortgage; and

(ii) The signed, stamped, and registered mortgage has been delivered to a person, approved in writing by all of the

contributors, for holding in safe custody on their behalf; or

- (c) All money payable to the contributors under the mortgage has been paid to them.

24. Restriction on transfer of nominee mortgages - (1)
A broker shall not permit a nominee mortgage in respect of which he acts as broker to be mortgaged or transferred to another person unless -

- (a) The contributors receive written notice of the proposed mortgage or transfer (including the name of the proposed mortgagee or transferee and the consideration to be paid therefore); and

- (b) After receiving such notice, the contributors consent in writing to the mortgage or transfer.

(2) A broker shall not permit the interest of a contributor in a nominee mortgage in respect of which he acts as broker to be mortgaged or transferred to another person other than at his written request unless -

- (a) The contributor receives written notice of the proposed mortgage or transfer and, if he so requires it, the name of the proposed mortgagee or transferee and the consideration to be paid therefor; and

- (b) After receiving such notice, the contributor consents in writing to the mortgage or transfer.

25. Restrictions on creation of prior charges and discharges of nominee mortgages - (1) A broker shall not consent to any memorandum of priority or other document being executed enabling a prior or pari passu charge to be created in respect of land charged with a nominee mortgage without the prior written consent of all the contributors.

(2) A broker shall give written notice to all contributors to a nominee mortgage of any charges being registered without the need for a priority document to be signed by the mortgagee, which are registered in respect of the land which is charged with a mortgage and which have, or may have, priority over, or rank equally with the mortgage, within 14 days of his becoming aware of their registration.

(3) No broker shall permit a nominee mortgage to be discharged (whether wholly or partially) before payment to or on behalf of the contributors thereto of all money due under the mortgage without the prior written consent of all contributors thereto.

(4) Nothing in subclause (3) of this regulation applies to the discharge of a nominee mortgage, not being a development mortgage, if -

- (a) The mortgage authorises partial releases to be given; and

- (b) The mortgage states any conditions on which partial releases may be given; and
- (c) The statement given to contributors pursuant to regulation 17(5)(a) or regulation 19 of these regulations, as the case may be, states that partial releases of the mortgage may be given and also states any conditions on which partial releases may be given; and
- (d) All of those conditions are fulfilled.

26. Default by mortgagor - (1) Every broker shall give written notice to the contributors to every contributory mortgage in respect of which he acts as broker of -

- (a) A default for at least 30 days by the mortgagor in the payment of interest due under the mortgage or in the repayment of any part of the principal sum:
- (b) Any other default by the mortgagor under the mortgage which is not remedied within 30 days after the default is or should have become known to the broker unless the default does not materially affect the contributors or their security.

(2) Every notice under subclause (1) of this regulation shall specify the action the broker is taking or proposes to take in respect of the default.

(3) A broker shall not charge the contributors to a contributory mortgage in respect of which he acts as a broker any sum in connection with the exercise by the broker on behalf of the contributors of the powers of the mortgagee under the mortgage except for disbursements including reasonable legal fees actually incurred by the broker.

27. Broker to furnish names of contributors - Where the contributors to a contributory mortgage have not been paid any sums of principal or interest within 14 days after the same are due, the broker who acts in respect of that mortgage shall, forthwith after he receives a written request to do so from any contributor to that mortgage, send to that contributor a list of the names and last known addresses of all the contributors to that mortgage.

28. Meetings of contributors - (1) A broker who acts in respect of a contributory mortgage may, from time to time, summon a meeting of all the contributors to the mortgage.

(2) Every broker who acts in respect of a contributory mortgage shall, at the request in writing of his auditor, summon a meeting of all the contributors to the mortgage.

(3) The auditor of a broker may, from time to time, summon a meeting of all the contributors to a contributory mortgage in respect of which that broker acts.

(4) Any auditor who summons a meeting pursuant to subclause (3) of this regulation shall, in summoning that meeting, be deemed to be acting only as the agent of the contributors.

(5) In the case of default to which subclause (1) of regulation 26 of these regulations applies, a broker shall, if requested by not less than one third of the contributors to the mortgage, summon a meeting of all contributors to the mortgage.

(6) Every meeting of contributors to a contributory mortgage shall be summoned by sending by post a notice, specifying the time and place of the meeting, to every contributor at his last known address not later than 14 days before the date of the proposed meeting.

(7) Every meeting summoned pursuant to this regulation shall be held under the chairmanship of the person appointed as chairman by the contributors present at the meeting.

(8) All matters calling for a decision at any meeting summoned pursuant to this regulation shall be decided by a majority of the votes cast in accordance with subclause (9) of this regulation by the contributors present and voting at the meeting either in person or by his agent duly authorised in writing.

(9) At any meeting summoned pursuant to this regulation each contributor is entitled to one vote for each \$100 of the principal sum secured by the mortgage and owed to the contributor (whether due for repayment or not).

(10) In the case of joint contributors the vote of the senior who tenders a vote, whether in person or by his duly

authorised agent, shall be accepted to the exclusion of the votes of the other joint holders, for this purpose seniority shall be determined by the order in which the names stand in the register maintained by the broker pursuant to regulation 30 of these regulations.

(11) The decision of any meeting summoned pursuant to this regulation shall be binding on the broker.

(12) In this regulation "contribution" includes money paid by a contributory mortgage broker, and "contributor" bears a similar meaning.

29. No contracting out - The provisions of these regulations shall have effect notwithstanding any provisions to the contrary in any contract or agreement.

Accounting Records and Audits

30. Brokers to keep register and accounting records -

(1) Every broker shall at all times keep a register, in a form approved by his auditor, of all contributory mortgages in respect of which he acts as a broker, and shall enter in that register the following particulars in respect of each mortgage -

- (a) A description of the mortgage sufficient to identify it; and
- (b) The principal sum secured by the mortgage; and
- (c) The dates when interest is payable under the mortgage; and
- (d) The date or dates when the principal sum or any portion thereof is repayable; and
- (e) The names and addresses of all of the contributors to the mortgage; and
- (f) The amount of each contributors's contributions to the mortgage; and
- (g) Such other particulars as the auditor may specify.

(2) Every broker shall at all times keep books of account, in a form approved by his auditor, in respect of the trust account of the broker's nominee company, which books of account shall contain a record of all transactions effected through that trust account sufficient to identify

each contributor on whose behalf such transaction was effected.

(3) Every broker shall at all times keep, in a form approved by his auditor, such other accounting records as will -

- (a) Correctly record and explain the transactions of the broker and the broker's nominee company in each contributory mortgage in respect of which he acts as a broker; and
- (b) At all times enable information relating to each mortgage and each contributor in that mortgage to be ascertained; and
- (c) Will at all times enable the auditor to determine whether the broker is complying with the Act and these regulations.

31. Auditors - (1) Subject to subclauses (2), (3) and (5) of this regulation, every person who has consented to act as auditor for a broker shall audit the accounting and other records relating to the broker's nominee company and the contributory mortgages in respect of which the broker acts and the register required to be kept pursuant to regulation 30(1) of these regulations, in order to ascertain whether -

- (a) The broker is complying with these regulations; and

(b) The broker is keeping proper accounting records in accordance with regulation 30 of these regulations; and

(c) Money is being received and disbursed in accordance with the terms of the general authorities or special authorities given by the contributors.

(2) For the purpose of carrying out such audit the auditor shall examine the accounting and other records relating to the broker's nominee company and the contributory mortgages in respect of which he acts and the register required to be kept pursuant to regulation 30(1) of these regulations so that -

(a) At least one examination is made during the first, second and third quarters of the broker's financial year; and

(b) The fourth examination and the audit is completed not later than 3 months after the close of the broker's financial year.

(3) An auditor shall not be required to audit any records relating to a contributory mortgage if -

(a) The mortgage is registered under the Land Transfer Act 1952; and

(b) The mortgagees named in the mortgage are the contributors to the mortgage; and

- (c) Each of the contributors has instructed the broker in writing that all moneys payable to the contributors under the mortgage are to be paid directly to the contributors.

(4) Forthwith after the completion of each examination of the accounting and other records of the broker and the broker's nominee company and the register required to be kept pursuant to regulation 30(1) of these regulations, the auditor shall -

- (a) Send to the broker a report of the results of the examination or the completed audit, as the case may be; and
- (b) If the report discloses any breach of the Act, or these regulations, or the terms of any general authority or special authority, send a copy of the report to the Registrar.

(5) A person who has consented to act as auditor for a broker shall not be required to comply with this regulation if -

- (a) He sends to the Registrar written notice stating that he has ceased to act as an auditor for the broker named in the notice; or
- (b) Another auditor has consented in accordance with these regulations to act for the broker and that consent has been given to the Registrar.

Miscellaneous

32. Persons to whom notice to be given by broker pursuant to section 57A(2)(c) of the Securities Act 1978 - For the purposes of section 57A(2)(c) of the Act the contributors to a contributory mortgage in respect of a breach of which a broker has become aware are the persons to whom notice of the breach is required to be given.

33. Offences - Every person who contravenes, or fails to comply with, any provision of these regulations commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000.

34. Transitional Provisions - Nothing in these regulations prevents a company that is in existence at the date of commencement of these regulations from acting as a nominee company provided that within 12 months of the date of commencement of these regulations -

- (a) Its Memorandum of Association is changed to the form set out in the First Schedule to these regulations; and
- (b) Its Articles of Association are changed to the form set out in the Second Schedule to these regulations; and
- (c) Its name is changed to comply with paragraph (c) of the definition of "nominee company" in regulation 2 of these regulations, or the

consent of the Securities Commission is
obtained to a continuation of the present
name.

FIRST SCHEDULE

Reg. 2

FORM OF MEMORANDUM OF ASSOCIATION OF NOMINEE COMPANY

The Companies Act 1955
Private Company limited by shares

MEMORANDUM OF ASSOCIATION

OF

..... NOMINEE COMPANY LIMITED

1. THE name of the Company is
Nominee Company Limited.
2. THE Company is a Private Company.
3. THE liability of the members is limited.
4. THE share capital of the Company is dollars
(\$) divided into shares of one dollar (\$1)
each.

WE, the several persons whose names, addresses and descriptions are subscribed hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

DATED this day of 19 .

Name in full		Number of Shares	
Description		taken by each	
and address	Signature	subscriber	Witness

SECOND SCHEDULE

Reg. 2

FORM OF ARTICLES OF ASSOCIATION OF NOMINEE COMPANY

Preliminary

1. The regulations contained in Table A in the Third Schedule to the Companies Act 1955 and hereinafter called Table A are hereby adopted by the company with and subject to the exclusions, conditions and modifications hereinafter

Interpretation

2. In these Articles, "Commission" means the Securities Commission established by section 9 of the Securities Act 1978.

Share Capital and Variation of Rights

3. Regulations 2 to 5 (both inclusive) of Table A are hereby excluded. The holders of the shares in the capital of the company shall be the persons acting as brokers (as that term is defined in Regulation 2(1) of the Securities Act (Contributory Mortgages) Regulations 1984) and persons acting on their behalf.

PROVIDED ALWAYS that the Commission shall be entitled to execute in the name of any shareholder or of the personal representative of any shareholder, a share transfer in favour of any person, firm or corporation and to procure the same to be registered in the books of the company.

Transfer of Shares

4. Regulation 24 of Table A is hereby excluded. The directors may, in their absolute and uncontrolled discretion, refuse to register any transfer of shares other than a transfer pursuant to the proviso to Article 3 hereof and shall not be bound to give any reason therefor.

5. Regulation 54 of Table A is hereby excluded. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided the quorum for the general meeting shall be persons present not being less than two in number and holding or representing by proxy or otherwise as by these regulations provided not less than fifty-one per centum of the shares in the capital of the company.

6. Any member may at any time and from time to time by power of attorney appoint any person (being a person qualified to be a shareholder pursuant to the provisions of Article 3 hereof) to be his attorney to attend meetings of the company and on his behalf to vote and to sign any entry in the company's minute book and generally direct for him in his capacity as a member of the company as fully and effectually to all intents and purposes as such member could do in his own proper person if personally present.

7. Regulation 76 of Table A is hereby excluded. No director shall be entitled to remuneration or to the payment of any expenses incurred by him.

8. Regulation 77 of Table A is hereby modified by inserting the following proviso at the end thereof:

"PROVIDED ALWAYS, that no director appointed by the Commission pursuant to section 44B of the Securities Act 1978, shall be subject to any shareholding qualification."

9. Regulation 78 of Table A is hereby excluded.

10. Each director shall have the power by notice in writing or by telex facsimile telegram or cable to the company to appoint any person (being a person qualified to be a director of the company and including any other director) to act as a deputy director in his place during his inability to act as a director and each director may at his discretion by notice in writing or by telex facsimile telegram or cable to the company remove his deputy director. On any such appointment being made the deputy director shall whilst acting in the place of the director he represents exercise and discharge all the powers rights duties and privileges (including the right of acting as Chairman) of the director appointing him and be subject in all respects to the same terms and provisions as the director.

11. Clauses (2) and (4) of Regulation 84 of Table A are hereby excluded.

12. A director may vote in respect of any contract or arrangement in which he is interested and if he does so his

vote shall be counted and he shall be counted in the quorum present at the meeting.

13. A director notwithstanding his interest may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any office or place or profit under the company, or whereat the terms of such appointment are arranged and he may vote on any such appointment or arrangement.

14. Regulation 88 of Table A is hereby modified by deleting subsection (f) thereof and by inserting the following new subsection (f).

"(f) Is removed by the Commission pursuant to section 44B of the Securities Act 1978"

15. Regulations 89 to 97 inclusive of Table A are hereby excluded.

Proceedings of Directors

16. Regulation 99 of Table A is hereby modified by inserting the following proviso at the end thereof:

"PROVIDED ALWAYS, that if the Commission appoints any person or persons as a director or directors in place of all of the directors of the company pursuant to section 44B of the Securities Act 1978, such director or directors shall constitute a quorum for the transaction of the business of the directors."

17. Regulation 100 of Table A is hereby excluded. If at any time there shall be only one director of the company (whether through failure to appoint a director or otherwise howsoever) such director shall have and may exercise all the powers given to the directors or any two of them by these presents or by the law.

18. Regulation 106 of Table A is hereby modified by inserting the following at the end thereof:

"Notwithstanding the foregoing provisions of the Article, a resolution authorising the execution of discharges, partial discharges and variations of mortgages and other securities (including memoranda of satisfaction and consents to entry of memoranda of satisfaction) shall be valid and effectual if signed by not less than two directors where the number of directors is two or more and by the sole director where there is only one director."

Secretary

19. Regulation 110 of Table A shall apply to the company but shall be subject to the provisions of section 44B of the Securities Act 1978.

20. Regulation 111 of Table A is hereby excluded. No person shall be appointed or hold office as secretary who is the sole director of the company.

The Seal

21. Regulation 113 of Table A is hereby excluded. The seal shall be held by the secretary of the company and shall only be used by the authority of a resolution of the directors and every instrument to which the seal is affixed shall be signed by two directors or by one director and the secretary.

Accounts

22. Regulation 123 of Table A is hereby modified by adding at the end thereof, "and regulation 30 of the Securities Act (Contributory Mortgage) Regulations 1984."

23. The directors shall ensure that all moneys paid by any person for the purpose of obtaining an interest in a contributory mortgage (other than such an interest previously owned by the broker) and all moneys payable in respect of any security or interest therein held by the company are paid directly to the company's trust account and are disbursed from the company's trust account in accordance with the provisions of the Securities Act (Contributory Mortgage) Regulations 1984.

DATED this

day of

19

Name in full

Description and address

Signature

Witness

THIRD SCHEDULE

Reg.7(1) (b)

CONSENT OF AUDITOR

Pursuant to Regulation 7 of the Securities Act
(Contributory Mortgage) Regulations 1984, I 【Full name of
auditor】 of 【Full address of auditor】

- (a) Hereby consent to act as auditor for
【Full name of broker】 of 【Full address of
broker】; and
- (b) Confirm that I will continue to so act until I am
released from by obligations as auditor in
accordance with regulation 31(5) of those
regulations.

DATED this

day of

19

Signature of auditor

FOURTH SCHEDULE

Reg.8(c)

INFORMATION TO BE CONTAINED IN
APPLICATION FOR REGISTRATION AS A BROKER

1. Where the applicant is an individual, the full name and address of the applicant.
2. Where the applicant is a body corporate, the full name of the applicant, the address of its registered office and the full name and address of every director of the applicant.
3. The full name of the applicant's nominee company and the address of its registered office.
4. The full name and address of every person who is an officer, director or shareholder of the applicant's nominee company.
5. The name and address of the trading bank where the trust account of the applicant's nominee company is kept.
6. The name and address of the applicant's auditor.

FIFTH SCHEDULE

Reg.8(d)

DOCUMENTS AND CERTIFICATES TO BE ATTACHED TO
APPLICATION FOR REGISTRATION AS A BROKER

1. A copy of the Memorandum of Association of the applicant's nominee company.
2. A copy of the Articles of Association of the applicant's nominee company.
3. (1) If the applicant is an individual, the latest audited financial statements of the applicant's business, which shall -
 - (a) Be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and
 - (b) Include a statement of assets and liabilities and a statement of income and expenses; and
 - (c) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant acted as broker during the accounting period for which the financial statements have been made up; and

(d) Be signed by the applicant.

(2) If the applicant is not an individual, the latest audited financial statements of the applicant, which shall -

(a) Be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and

(b) Include a balance sheet and a profit and loss account; and

(c) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant acted as broker during the accounting period for which the financial statements have been made up; and

(d) Be signed by every director of the applicant.

(3) For the purposes of paragraph (c) of subclause (1) and paragraph (c) of subclause (2) of this clause, the term "any losses incurred by contributors arising from any contributory mortgage" includes -

(a) Any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and

(b) Any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

4. A copy of the auditor's report on the financial statements of the applicant.

5. The consent of the applicant's auditor being the auditor named in clause 6 of the Fourth Schedule to the regulations, which consent shall be in the form set out in the Third Schedule to these regulations and which shall be signed not earlier than 14 days before the date the application is delivered to the Registrar.

SIXTH SCHEDULE

Reg.10(2)(c)

INFORMATION TO BE CONTAINED IN
ANNUAL REPORT OF BROKER

1. (1) Where the applicant is an individual, the full name and address of the applicant.

(2) Where the applicant is a body corporate, the full name of the applicant, the address of its registered office and the full name and address of every director of the applicant.
2. The full name of the broker's nominee company and the address of its registered office.
3. The full name and address of every person who is an officer, director or shareholder of the broker's nominee company.
4. The name and address of the trading bank where the broker's nominee company's trust account is kept.
5. The name and address of the broker's auditor.

SEVENTH SCHEDULE

Reg.10(2)(d)

DOCUMENTS AND CERTIFICATES TO BE ATTACHED TO
ANNUAL REPORT OF A BROKER

1. (1) If the broker is an individual, the latest audited financial statements of the broker's business, which shall -

- (a) Include a statement of assets and liabilities and a statement of income and expenses; and
- (b) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the broker acted as a broker during the accounting period for which the financial statements have been made up; and
- (c) To be signed by the broker.

(2) If the broker is not an individual, the latest audited financial statements of the broker, which shall -

- (a) Include a balance sheet and a profit and loss account; and
- (b) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory

mortgage in respect of which the broker acted as a broker during the accounting period for which the financial statements have been made up; and

(c) Be signed by all of the directors of the broker.

(3) For the purposes of subparagraph (b) of subclause (1) and subparagraph (b) of subclause (2) of this clause, the term "any losses incurred by contributors arising from any contributory mortgage" includes -

(a) Any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and

(b) Any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

2. A copy of the auditor's report on the financial statements which shall contain a statement by the auditor as to whether -

(a) The auditor has completed the audit for the broker's most recent financial year pursuant to regulation 31 of these regulations; and

(b) During that period, the broker has complied with these regulations; and

- (c) During that period, the broker has kept proper accounting records in accordance with regulation 30 of these regulations; and
- (d) During that period, money has been received and disbursed by the broker and the broker's nominee company in accordance with the terms of the authorities given by contributors.

EIGHTH SCHEDULE

Reg.17(2)

FORM OF GENERAL AUTHORITY FOR
INVESTMENT ON FIRST MORTGAGE

To **【Name of Broker】**

I/We hereby authorise and instruct you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1984 and the following instructions:

(1) The capital sum shall be invested in one or more mortgages of land (not being development mortgages within the meaning of those Regulations) **【insert any restrictions desired e.g. first, second or subsequent mortgages, freehold or leasehold land】** including contributory mortgages and nominee mortgages within the meaning of those Regulations, and, pending such investment, shall be invested as follows **【state investment instructions】**'

(2) The aggregate of the principal sum advanced under and secured by each mortgage and the amount of all charges ranking ahead or equally therewith shall not exceed **【state percentage not exceeding 80%】** of the value of the land subject to the mortgage as dated in a valuation report within the meaning of those Regulations and the loan shall be made in accordance with the advice of the registered valuer expressed in that report;

(3) The term of each loan shall be not less than 6 months nor more than 5 years [alternatively state other instructions];

(4) Interest shall accrue at the rate current when the loan is made and shall be paid quarterly [alternatively state other instructions];

(5) Where the mortgage is a nominee mortgage within the meaning of those Regulations:

(a) The documents of security shall be completed and held in the name of [insert name and address of broker's nominee company] (hereinafter referred to as "the Company");

(b) The Company will act as a trustee for me/us and other contributors (if any);

(c) The Company shall be entitled as its directors deem appropriate to exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the power to buy in at any sale of the property charged by the security;

(d) The Company shall be entitled to indemnity from the contributors proportionately to the contributions in respect of all costs, claims and other liabilities arising in relation to the mortgage and the principal sum thereby

secured. **[This paragraph may be excluded by the broker]**.

(6) Upon repayment of any principal sum you shall -

(a) Reinvest the money in accordance with this authority if it has not then been revoked:

(b) Pay the money to me/us at the address given below:

(c) Pay the money for the credit of my/our bank account mentioned below.

[Delete as appropriate]

(7) Upon receipt of interest you shall -

(a) Invest the money in accordance with this authority if it has not then been revoked:

(b) Pay the money to me/us at the address given below:

(c) Pay the money for the credit of my/our bank account mentioned below.

[Delete as appropriate]

(8) This authority remains in force for one year from the date of this authority or till revoked by me in writing, whichever the sooner.

(9) I/We acknowledge that I/We have received a copy of this authority.

Full name of investor(s)

Address of Investor(s)

Capital Sum to be invested

Bank Account - Name of Bank

- Name of Account

- Number of Account

Date of this authority

Signature of Investor(s)

NINTH SCHEDULE

Reg.17(4)

FORM OF SPECIAL AUTHORITY FOR
INVESTMENT ON MORTGAGE

To: **【Name of Broker】**

I/We hereby authorise and instruct you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1984 the following instructions:

- (1) The capital sum shall be invested on the security of one or more mortgages of land of which details are given below, and pending such investment shall be invested as follows **【state investment instructions】**.
- (2) Interest shall accrue at the rate shown, and shall be paid quarterly **【alternatively state other instructions】**.
- (3) Where the mortgage is a nominee mortgage within the meaning of those Regulations -
 - (a) The documents of security shall be completed and held in the name of **【insert name and address of broker's nominee company】** (hereinafter referred to as "the Company");

- (b) The company will act as a trustee for me/us and other contributors (if any);
- (c) The company shall be entitled as its directors deem appropriate to exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the power to buy in at any sale of the property charged by the security;
- (d) The company shall be entitled to indemnity from the contributors proportionately to their contributions in respect of all costs, claims and other liabilities in relation to the mortgage and the principal sum thereby secured. **[This paragraph may be excluded by the broker].**

4. Upon repayment of any principal sum you shall -

- (a) Pay the money to me/us at the address given below:
- (b) Pay the money for the credit of my/our bank account mentioned below:
- (c) Retain the money in your trust account pending further instructions.

[Delete as appropriate]

5. Upon receipt of interest you shall -

(a) Pay the money to me/us at the address given below:

(b) Pay the money for the credit of my/our bank
account mentioned below:

(c) Retain the money in your trust account pending
further instructions.

[Delete as appropriate]

6. The details regarding the mortgage(s) are as follows:

Borrower:

Security (particulars of property to be charged and
nature of security):

If the security is not a first charge, details
(including amount) of the charge(s) having priority

Total principal sum to be secured

Term:

Interest:

Priority:

Other terms:

7. I/we acknowledge that I/we have received a copy of this
authority.

Full name of Investor(s)

Address of Investor(s)

Capital sum to be invested

Bank account - Name of Bank

- Name of Account

- Number of Account

Date of this authority

Signature of Investor(s)

TENTH SCHEDULE

Reg.17(5) (a)

INFORMATION TO BE GIVEN TO CONTRIBUTOR
IN RESPECT OF DEVELOPMENT MORTGAGE

1. The name and address of the broker.
2. The name, address and occupation of each mortgagor under the mortgage.
3. The address, book and folio number of the certificate of title of the land which is, or is to be, charged by the mortgage.
4. A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
5. If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
6. The present use of the land; and a brief description of the development, or proposed development, of the land.
7. In relation to the principal sum -
 - (a) The principal sum secured, or intended to be secured, by the mortgage; and
 - (b) The due date for repayment of the principal sum; and
 - (c) The terms of any right of early repayment of the principal sum.

8. If the land which is, or is to be, charged by the mortgage is charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:

- (a) A statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
- (b) The principal sum secured by each such mortgage or encumbrance; and
- (c) A statement whether any of such mortgages or encumbrances provide for future advances that will rank ahead of or equally with the mortgage.

9. In relation to interest payable under the mortgage -

- (a) The rate of interest and any penalty rate that is, or is to be, payable:
- (b) The dates upon which payment of interest is due:
- (c) Details of any collection, commission or other amounts to be deducted from the interest by the broker:
- (d) A description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.

10. The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the reasons for the difference.
11. A statement, signed by each mortgagor, stating -
 - (a) The expected costs of the development and a description of the basis on which such costs have been calculated; and
 - (b) The source of funds to be used to service all money borrowed in respect of the land including that to be secured by the mortgage during the development; and
 - (c) Whether there are any circumstances that materially affect the trading or profitability of the mortgagor, the value of the land, the ability of the mortgagor to pay his liabilities due within the next 12 months, or the ability of the mortgagor to complete the development of the land.
12. The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.

13. A brief description of any collateral security.
14. If the broker, or an associate of the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest financial statements of the guarantor, or the indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.
15. (1) If the mortgage is, or is to be, a nominee mortgage, a statement as to whether under the terms of the mortgage partial releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.

(2) All other terms of the mortgage (other than those implied by law).
16. If the mortgage provides that the principal sum is to be paid to the mortgagor in instalments -
 - (a) A statement to that effect; and
 - (b) A description of the manner in which the instalment payments will be made including a description of the conditions to be fulfilled prior to the making of such payments.
17. (1) A statement whether the mortgage is, or is to be, a nominee mortgage.

(2) In the case of a nominee mortgage, the name of the broker's nominee company and the address of its registered office.

18. A description and quantification of any sums paid or to be paid to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.

19. A statement to the effect that one copy of the mortgage will be sent to each contributor or his authorised representative upon request and without charge.

20. If the broker or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, is associated with the mortgagor, or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.

21. The name and address of the auditor to the broker.

22. A statement by the broker to the effect that to the best of his knowledge and belief the information in the statement is correct and not misleading and there are no material matters relating to the mortgage that are not set out therein.

23. If any information given to the contributor by or on behalf of the broker includes a statement by an expert other than a registered valuer within the meaning of

these regulations, a separate statement, signed by the expert, to the effect that the expert has given his consent to his statement being given to the contributor, and a statement of the expert's qualifications.

ELEVENTH SCHEDULE

Regs.17(6) (a)

and 19

INFORMATION TO BE GIVEN TO CONTRIBUTOR
IN RESPECT OF MORTGAGE OTHER THAN DEVELOPMENT MORTGAGE

1. The name and address of the broker.
2. The name, address and occupation of each mortgagor under the mortgage.
3. The address, book and folio number of the certificate of title, and the proposed use of the land which is, or is to be, charged by the mortgage.
4. A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
5. If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
6. In relation to the principal sum -
 - (a) The principal sum secured, or intended to be secured, by the mortgage; and
 - (b) The due date for repayment of the principal sum; and
 - (c) The terms of any right of early repayment of the principal sum.

7. If the land which is, or is to be, charged by the mortgage is charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:
 - (a) A statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
 - (b) The principal sum secured by each such mortgage or encumbrance; and
 - (c) A statement whether any of such mortgages or encumbrances provide for future advances that will rank ahead of or equally with the mortgage.

8. In relation to interest payable under the mortgage -
 - (a) The rate of interest and any penalty rate that is, or is to be payable:
 - (b) The dates upon which payment of interest is due:
 - (c) Details of any collection, commission or other amounts to be deducted from the interest by the broker:
 - (d) A description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.

9. The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the explanation for the difference.
10. The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.
11. A brief description of any collateral security.
12. If the broker, or an associate of the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest annual audited financial statements of the guarantor or indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.
13. If the mortgage, is, or is to be, a nominee mortgage a statement as to whether under the terms of the mortgage partial releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.
14. (1) A statement whether the mortgage is, or is to be, a nominee mortgage.

(2) In the case of a nominee mortgage the name of the broker's nominee company, and the address of its registered office.

15. A description and quantification of any sums paid or to be paid to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.
16. A statement to the effect that a copy of the mortgage will be sent to each contributor or his authorised representative upon request and without charge.
17. If the broker or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage is associated with the mortgagor or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.
18. The name and address of the auditor of the broker.
19. A statement by the broker to the effect that to the best of his knowledge and belief the information in the statement is correct and not misleading and that there are no material matters relating to the mortgage that are not set out therein.
20. If any information given to the contributor by or on behalf of the broker includes a statement by an expert, other than a registered valuer within the meaning of

these regulations, a separate statement, signed by the expert, to the effect that the expert has given his consent to his statement being given to the contributor, and a statement of the expert's qualifications.

TWELFTH SCHEDULE

Reg.17(5)(b)

and (6)(b)

INFORMATION AND OTHER MATTERS TO BE
CONTAINED IN VALUATION REPORT

1. The name and address of the registered valuer and a brief description of his qualifications.
2. A statement that the valuer has acted independently of, and has not received instructions from, any interested person (other than the broker or a contributory).
3. The situation, description, and area of the land.
4. The land value and the capital value of the land as shown on the most recent government valuation of the land and the date of that valuation.
5. The present use of the land and, if known to the valuer, the proposed use of the land.
6. The nature and value of any improvements situated on the land.
7. The opinion of the valuer as to the capital value of the land.
8. The opinion of the valuer as to the land value of the land.
9. The basis upon which the valuation was made and any assumptions used in making the valuation.

10. If the land is, or to the knowledge of the valuer is proposed to be, used for the purpose of producing income, a statement by the valuer as to the amount of income that the land can be reasonably expected to produce on an annual basis under conditions prevailing at the time that the report is made.
11. The amount of loan recommended by the valuer.
12. A statement by the valuer that:
 - (a) The valuation has been prepared for use by intending lenders and takes account of matters which would affect the price for which the property could be realised on sale; and
 - (b) The valuer consents to the distribution of the report to contributors and that, as of the date of the report, he has not withdrawn his consent.
13. In the case of a development mortgage, the opinion of the valuer as to the reasonably expected capital value of the land after completion of the development.
14. The date as at which the report was prepared being a date not earlier than 4 months before the date of the mortgage.