

CHAPTER 75:01

CO-OPERATIVE FINANCIAL INSTITUTIONS ACT

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CO-OPERATIVE FINANCIAL INSTITUTIONS ACT

8 of 1976

An Act to make provisions for the establishment and functions of the Co-operative Finance Administration and Co-operative Financial Institutions under its jurisdiction.

[1ST JULY, 1976]

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Co-operative Financial Institutions Act.

Interpretation.

2. In this Act—

“the Administration” means the Co-operative Finance Administration established by section 3;

“bank” has the same meaning as in section 2 of the Financial Institutions Act 1995;

“the Bank” has the same meaning as in section 2 of the Bank of Guyana Act 1995;

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“financial institution” means a co-operative financial institution established under section 15;

“licensed financial institution” means a financial institution or a company engaged in a banking or financial business to which a licence is granted under the Financial Institutions Act 1995 authorising the conduct of such business in Guyana;

“Minister” means the Minister responsible for finance.

“the National Insurance Board” means the National Insurance Board established by section 3 of the National Insurance and Social Security Act.

PART II

CO-OPERATIVE FINANCE ADMINISTRATION

3. (1) There is hereby established a body corporate to be known as the Co-operative Finance Administration consisting of the Minister as Chairman and not more than eight other persons appointed by him by instrument in writing from amongst persons appearing to him to be qualified as having experience of, and shown, capacity in, such matters which he considers will be beneficial in the functioning of the Administration and, without prejudice to the generality of the foregoing, in particular, in matters relating to administration, agriculture, banking, commerce, co-operative societies, finance, housing, industry, insurance or trade.

Establishment and incorporation of the Co-operative Finance Administration.

(2) A member of the Administration (other than a public officer, or a person employed by a public corporation or other body corporate in which the Government has the controlling interest) appointed by the Minister may at any time resign his office by writing under his hand addressed to the Minister.

(3) The membership of the Administration as first constituted and every change thereof shall be notified in the *Gazette*.

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(4) The seal of the Administration shall be kept in the custody of the Chairman or the Deputy Chairman or the Secretary of the Administration and shall be authenticated by the signature of the Chairman, or the Deputy Chairman, and the Secretary.

(5) Every document purporting to be an instrument duly executed under the seal of the Administration shall be received in evidence and deemed, without further proof, to be so executed unless the contrary is proved.

(6) All documents, other than those required by law to be under seal, made by, and all decisions of, the Administration may be signified under the hand of the Chairman, or the Deputy Chairman, or the Secretary of the Administration.

Functions of
the Adminis-
tration.

4. (1) It shall be the function of the Administration to exercise supervision and control over the financial institutions established under section 15 and the National Insurance Board.

(2) Without prejudice to the generality of subsection (1), the function of the Administration shall, in particular, include—

(a) advising financial institutions and the National Insurance Board on matters relating to their activities, operations and policies;

(b) co-ordinating the activities, operations and policies of financial institutions and the National Insurance Board;

(c) holding the shares (if any) of the State or the Government in any financial institution, anything in any other law to the contrary notwithstanding;

(d) giving a financial institution and the National Insurance Board directions of a general or special character as to the policy to be followed by the financial institution and the National Insurance Board, including matters relating to the employment of persons by a financial institution and the National Insurance Board, their conditions of service and the deployment of staff in the financial institution and the

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National Insurance Board and the financial institution and the National Insurance Board shall give effect to every such direction.

(3) The Chairman or any member of the Administration authorised by the Chairman in that behalf or the Secretary of the Administration shall have the authority to attend any meeting of the directors of any financial institution and the National Insurance Board and to take part in the deliberations of such meeting without the right to vote.

(4) Notwithstanding the foregoing, the Administration shall not exercise any of the powers conferred on the Bank under the Financial Institutions Act 1995, the Bank of Guyana Act 1995 or any other law with respect to the licensing, regulation, inspection or supervision of licensed financial institutions.

5. (1) The Administration shall meet at least once in every period of three months and at such other times as may be necessary or expedient for the transaction of its business, and such meetings shall be held at such place and time and on such days as the Administration may determine.

Meeting and procedure of the Administration.

(2) The Chairman of the Administration may at any time summon a special meeting of the Administration and shall summon a special meeting within seven days of a requisition for that purpose addressed to him by any four members of the Administration.

(3) Five members of the Administration shall constitute a quorum.

(4) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairman or the Deputy Chairman or other member presiding at the meeting, as the case may be, as soon as practicable thereafter at a subsequent meeting.

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Power to
appoint
committees.

6. The Administration may appoint a committee of the Administration to examine and report to it on any matter arising out of or connected with any of its functions and any such committee may include persons who are not members of the Administration.

Power to
delegate.

7. Subject to this Act, the Administration may delegate to any member or committee of the Administration the power and authority to carry out on its behalf such functions as the Administration may determine.

Protection of
members of
the Adminis-
tration.

8. (1) Subject to subsection (2), no action, suit, prosecution or other proceedings shall be brought or instituted personally against a member of the Administration in respect of any act done *bona fide* in pursuance of the execution or intended execution of his duties.

(2) Where a member of the Administration is exempt from liability by reason only of subsection (1), the Administration is liable to the extent that it would be if the member was a servant or agent of the Administration, so, however, that if in any case the Administration is not liable for any of the above-mentioned acts, then subsection (1) does not operate to exempt such member as therein stated.

Appointment
and remunera-
tion of officers
and other
employees of
the Adminis-
tration.

9. (1) The Administration may employ at such remuneration and on such terms and conditions (including the payment of pensions, gratuities or other like benefits by reference to the service of its officers and employees) as it thinks fit, a Secretary and such other officers and employees as it deems necessary for the purpose of carrying out the functions of the Administration:

Provided that if the office of Secretary is vacant or if the Secretary is for any reason unable to perform the functions of his office, the Minister may assign a public officer in the Ministry to carry out the functions of the office of Secretary.

(2) The Secretary shall be the chief executive officer of the Administration, and he shall, subject to any general or special directions of the Minister or the Administration, be responsible for the proper management of the business of the Administration and be answerable to the Minister and the Administration for the proper

working of the officers and employees of the Administration in accordance with their terms and conditions of service determined by the Administration.

10. The Administration shall pay to each member thereof (other than the Minister) in respect of his officer as such, such, if any, remuneration and allowances as the Minister may determine, and to the Deputy Chairman in respect of his officer as such, such, if any, remuneration and allowances (in addition to any remuneration or allowances payable to him as a member) as may be so determined.

Remuneration of members of the Administration.

11. (1) The funds and resources of the Administration shall consist of—

Funds and resources of the Administration.

- (a) such sums as may be provided by or under an appropriation law;
- (b) such sums as may be paid to the Administration pursuant to section 12;
- (c) such sums as may be allocated from time to time to the Administration from loan funds;
- (d) moneys earned or arising from any property or investments of the Administration;
- (e) all other sums or property which may in any manner become payable to, or vested in, the Administration in respect of any matter incidental to its functions.

(2) For the purposes of this section, the expression “loan funds” means such sums as may be made available, from time to time, by the Government by way of a loan.

12. For the purpose of meeting expenditure incurred in exercising its functions under this Act, the Administration may make levies on the funds and resources of financial institutions and the National Insurance Board in such amounts as the Administration may determine and the levies so made shall be paid by the financial institutions and the National Insurance Board.

Levies by the Administration.

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Investments of
the Adminis-
tration.

13. Moneys standing at the credit of the Administration may, from time to time, be invested in such securities as may be determined by the Administration and it may, from time to time, sell all or any of such securities as it thinks expedient to do so.

Accounts and
audit.

14. (1) The Administration shall keep accounts of its transactions to the satisfaction of the Minister and the accounts shall be audited annually by an auditor appointed by the Minister.

(2) The members, officers and other employees of the Administration shall grant to the auditor appointed under subsection (1) access to all books, documents, cash and securities of the Administration and shall give to him on request all such information as may be within their knowledge in relation to the operation of the Administration.

Annual
reports.

15. (1) So soon as its accounts for the preceding year have been audited in accordance with provisions of section 14, the Administration shall submit to the Minister a report on its operation throughout that year, together with a statement of its accounts so audited.

(2) A copy of the report mentioned in subsection (1) together with a copy of the report of the auditor shall be printed and shall be laid before the National Assembly.

PART III

ESTABLISHMENT AND MANAGEMENT OF CO-OPERATIVE FINANCIAL INSTITUTIONS

Establishment
and
incorporation
of co-operative
financial
institutions.

16. (1) The Minister may, by order which shall be subject to negative resolution of the National Assembly, establish a co-operative financial institution, or reconstitute any of the institutions mentioned in section 61(1) by establishing it as a co-operative financial institution, with such name and functions as shall be specified in the order and consisting of such number of directors as the Minister may determine.

(2) A co-operative financial institution established under this section shall be a body corporate and the liability of the members of a financial institution is limited.

(3) (a) Subject to paragraph (b), the directors of a financial institution shall be appointed by the Minister by instrument in writing from amongst persons appearing to him to be qualified in like manner as is specified in section 3 in relation to members of the Administration.

(b) The Minister may, by the order establishing a co-operative financial institution under this section, or by a subsequent order made under this subsection, make provision for the election of the directors of a financial institution, or any number of them, by the shareholders of the financial institution, and by such other categories of persons as may be specified in the order being persons having such interest in the financial institution as may be so specified.

(4) Any director of a financial institution (other than a public officer or a person employed by a public corporation or other body corporate in which the Government has the controlling interest) may at any time resign his office by instrument in writing addressed to the Chairman thereof, and upon the date of the receipt by the Chairman of such instrument such member shall cease to be a director of the financial institution.

(5) The names of the directors of a financial institution when it is first established and any change in the directors shall be published in the *Gazette*.

(6) A financial institution shall have its principal place of business in Georgetown or at such other place within Guyana as it may decide.

(7) A financial institution may establish branches in any place within or outside Guyana as it considers necessary.

(8) A financial institution may appoint agents or correspondents within or outside Guyana.

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(9) The seal of a financial institution shall be authenticated by the signature of the Chairman, or the Deputy Chairman, or the General Manager, and the Secretary of the financial institution, or in such other manner as may be authorised by resolution of the financial institution, and every document purporting to be an instrument duly executed under the seal of a financial institution shall be received in evidence and deemed, without further proof, to be so executed unless the contrary is proved.

(10) All documents, other than those required by law to be under seal, made by, and all decisions of, the financial institution may be signified under the hand of the Chairman, or Deputy Chairman, or the General Manager, or the Secretary, of the financial institution or any other officer of the financial institution authorised in that behalf by the financial institution.

(11) The Minister, by order establishing a financial institution under this section or by a subsequent order hereunder, may exclude or modify the application of this Act, other than sections 4, 51 and 56, in relation to the financial institution in respect of any particular matter:

Provided that nothing in this Act shall in any way authorise the Minister or the Administration to exclude or modify the application of the Financial Institutions Act 1995 or the Bank of Guyana Act 1995 to any licensed financial institution, except insofar as this Act, the Financial Institutions Act 1995 or the Bank of Guyana Act 1995 specifically confer such authority by language to that effect and not merely by implication.

(12) An order made under this section establishing a financial institution shall prescribe the functions of the financial institution and, without prejudice to section 61, may contain such other provisions as will enable the financial institution to carry out its functions under this Act and, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law, the order may contain provisions relating to the vesting of property (including property of the State), the transfer of assets and liabilities monetary arrangements and the preservation of rights and liabilities subsisting immediately before the coming into force of the order; where immovable property vests in

a financial institution by virtue of an order made under this section the order shall be treated for all purposes as if it were a transport or other document effecting the conveyance of immovable property and the Registrar of Deeds shall make such annotations on the records as may be necessary.

(13) Any financial institution which is conducting a banking or financial business as defined in section 2 of the Financial Institutions Act 1995 on the date on which that Act comes into force, or which is established by order under this section made after such date, shall comply in all respects with the provisions of the Financial Institutions Act 1995 and the Bank of Guyana Act 1995 applicable to licensed financial institutions in such manner and to such extent as such Acts shall provide.

17. (1) It shall be the function of a financial institution to stimulate, facilitate and undertake the functions for which it is established.

Functions of a financial institution.

(2) A financial institution shall have power for the purpose of the exercise of its functions under this Act—

(a) to carry on all activities the carrying on whereof appears to it to be requisite, advantageous or convenient for or in connection with the exercise of its functions; and

(b) to do anything and to enter into any transaction which in its opinion is calculated to facilitate the proper discharge of its functions or is incidental or conducive thereto.

(3) A financial institution shall afford to the Administration facilities for obtaining information with respect to the business of the financial institution, furnish the Administration with such returns, statements and other information in such manner and at such times as the Administration may require and also provide such facilities to the Administration as will enable verification of the information so furnished.

18. A financial institution shall pay to each or its directors in respect of his office as such, such, if any, remuneration and allowances as the Administration may determine, and to the Chairman and Deputy

Remuneration of directors of financial institution.

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Chairman, in respect of his office as such, such, if any, remuneration and allowances (in addition to any remuneration or allowances to which he may be entitled in respect of his office as a director) as may be so determined.

Meetings and
procedure of a
financial
institution.

19. (1) The directors of a financial institution shall meet at least once in every month and at such other times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the directors may determine.

(2) The Chairman may at any time call a special meeting of directors and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any three directors of the financial institution.

(3) One-half of the number of directors shall constitute a quorum.

(4) Minutes in proper form of each meeting shall be kept by the Secretary and shall be confirmed by the Chairman, or the Deputy Chairman, or other member elected to preside at the meeting, as the case may be, as soon as practicable thereafter at a subsequent meeting.

(5) The directors of a financial institution may co-opt any one or more persons to attend any particular meeting of the institution at which it is dealing with a particular matter, for the purpose of assisting or advising the institution, but no such person shall be entitled to vote thereat.

(6) The Secretary of a financial institution shall—

(a) send notices of all meetings of the directors to the Secretary of the Administration;

(b) furnish the Secretary of the Administration with a copy of the minutes of every meeting of the directors within two weeks after the meeting; and

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(c) furnish the Secretary of the Administration with a copy of the minutes of the annual general meeting or any special meeting of the shareholders of the financial institution.

20. (1) A financial institution may appoint a committee of the financial institution to examine and report to it on any matter whatsoever arising out of or connected with any of its functions.

Power to appoint committees.

(2) Any such committee shall consist of at least two directors of the financial institution together with such other persons, whether directors of the financial institution or not whose assistance or advice the financial institution may desire.

(3) Where persons, not being directors of the financial institution, are members of a committee appointed under this section, or where any person is co-opted under section 18(5), the financial institution may determine the remuneration and allowances of such persons, and such sums shall properly be payable out of the funds and resources of the financial institution.

(4) The financial institution may reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as the financial institution may think fit.

21. Subject to this Act, a financial institution may delegate to any director or committee of the financial institution the power to carry out on its behalf such functions as the financial institution may determine.

Power to delegate.

22. (1) The staff of a financial institution shall consist of a General Manager, a Secretary and such other officers and other employees as may be requisite for the proper carrying out of the functions of the financial institution.

Employment of staff.

(2) The General Manager of a financial institution shall be appointed by the Administration on such terms and conditions (including the payment of pension, gratuity, or other like benefits by reference to his service) as the Administration thinks fit and the remuneration of the General Manager shall be paid by the financial institution out of its funds and resources.

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(3) With the approval of the Administration, a financial institution may employ at such remuneration and on such terms and conditions (including the payment of pensions, gratuities, or other like benefits by reference to their service) as it thinks fit a Secretary and such other officers and other employees as may be requisite for the proper carrying out of the functions of the financial institution.

(4) The General Manager of a financial institution shall, subject to the general policy decisions of the Administration and of the directors of the financial institution, be responsible for the administration of the business of the financial institution and answerable therefor to the Administration and the directors.

Special
disqualifica-
tions for
officers of a
financial
institution.

23. (1) The officers and other employees of a financial institution shall owe their duty entirely to the financial institution and shall not engage in any other paid employment or professional or business activity, except as permitted under subsection (2).

(2) Any officer and other employee of a financial institution may, with the approval of the Minister or as authorised by the Financial Institutions Act 1995 or other applicable laws—

(a) serve on any committee or commission appointed by the Government to inquire into any matter affecting banking, or into any economic or financial matters relating to Guyana;

(b) serve on any international institution of which Guyana is a member;

(c) serve on the Board of any company, corporation or other body in which the Government or the financial institution holds stock or shares or otherwise participates;

(d) serve on any other institution.

(3) If any officer or other employee of a financial institution contravenes the provisions of subsection (1) his appointment shall be liable to be terminated by the person who appointed him.

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24. (1) Except for the purpose of the exercise of his functions or when lawfully required to do so by any court or under the provisions of any law, the Deputy Chairman, a member, the Secretary or an officer or other employee of the Administration, a director or an officer or other employee of a financial institution, shall not disclose to any person any information which he has acquired in the exercise of his functions.

Preservation of secrecy.

(2) If the Deputy Chairman, a member, the Secretary or an officer or other employee of the Administration, a director, officer or other employee of a financial institution contravenes the provisions of subsection (1) he is liable on summary conviction to a fine of five hundred dollars and to imprisonment for a term of six months.

25. (1) A financial institution may, with the approval of the Administration, make rules not inconsistent with this Act, the Financial Institutions Act 1995 or other applicable laws—

Power of financial institution to make rules.

- (a) governing the proceedings of the financial institution and the manner and transaction of its business;
- (b) prescribing the circumstances in which directors of the financial institution may receive travelling and subsistence allowances and fixing the rates of such allowances;
- (c) imposing fees in such cases as may be determined by the financial institution;
- (d) imposing such other fees, in such cases, at such rates and on such terms and conditions as may be determined by the directors of a financial institution where there has been default in the repayment of any principal moneys or interest thereon borrowed from the financial institution.
- (e) generally for the exercise of its functions.

(2) Notwithstanding anything contained in section 21 of the Interpretation and General Clauses Act, it shall not be necessary for any such rules to be published in the *Gazette*.

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26. (1) Subject to the provisions of subsection (2), no action, suit, prosecution or other proceedings shall be instituted personally against any director of a financial institution in respect of any act done *bona*

Protection of directors of a financial institution.

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fide in pursuance of the execution or intended execution of his functions under this Act, the Financial Institutions Act 1995 or other applicable laws.

(2) Where any director of a financial institution is exempt from liability by reason only of the provisions of subsection (1) the financial institution is liable to the extent that it would be if the said director were a servant or agent of the financial institution, so however, that if in any case a financial institution is not liable for any of the abovementioned acts, then the provisions of subsection (1) shall not operate to exempt any such member as therein stated.

Disclosure of interest by director of a financial institution.

27. (1) Subject to this section, it shall be the duty of a director of a financial institution who is in any way, whether directly or indirectly, interested in an application to a financial institution for a loan or in a body corporate or unincorporated in receipt of such a loan, or in a contract or proposed contract or in any arrangement or proposed arrangement with the financial institution, to declare the nature of his interest at a meeting of the financial institution.

(2) In the case of such application or proposed contract or arrangement the declaration required by this section to be made by a director of a financial institution shall be made at the meeting of the financial institution at which the question of granting or refusing the application or entering into the contract or arrangement is first taken into consideration, or if such director was not at the date of that meeting interested in the application or proposed contract or arrangement at the next meeting of the financial institution held after he became so interested and in a case where such director acquires an interest in any body corporate or unincorporated in respect of a loan from a financial institution or becomes interested in a contract or arrangement with the financial institution after it is made, the said declaration shall be made at the first meeting of the financial institution held after such director acquires such interest or becomes so interested.

(3) For the purposes of this section, a general notice given to the other directors of a financial institution by a director that he is also a member of a specified body corporate or unincorporated and is to be

regarded as interested in any application for a loan from the financial institution or in any contract or arrangement which may, after the date of the notice, be made by or

with the body corporate or unincorporate, shall be deemed to be a sufficient declaration of interest in relation to any application or contract or arrangement so made except that no such notice shall be of effect unless either it is given at a meeting of the financial institution concerned or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the financial institution after it is given.

(4) A director shall not vote in respect of any application to the financial institution for a loan in which he is interested, whether directly or indirectly, or in respect of any contract or arrangement in which he is interested, either directly or indirectly, and if he shall do so his vote shall not be counted, nor shall he be counted in the quorum present at the meeting.

(5) For the purposes of this section, where the interest of parents, spouse or children of any director is likely to be affected directly or indirectly by a decision of the financial institution on any matter, such interest shall be deemed to be the interest of that director.

(6) In addition to the requirements of the preceding subsections, a director of a financial institution which is a licensed financial institution shall make such disclosures and take such actions with respect to any loans, contracts or arrangements in which he has an interest as may be required under the Financial Institutions Act 1995.

(7) Without prejudice to subsection (7), the Minister may revoke the appointment of any director who contravenes or fails to comply with the provisions of this section.

(8) Any director who contravenes or fails to comply with the provisions of this section is liable on summary conviction to a fine of two hundred thousand dollars and to such other penalties as may be prescribed under any other law.

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Training of officers and other employees of a financial institution.

28. A financial institution may provide out of the funds of the financial institution and make such arrangements for the training of any of its officers and other employees as it may consider necessary for the efficient conduct of the business of the financial institution.

PART IV

FINANCIAL PROVISIONS

Authorised share capital of a financial institution.

29. (1) The Minister may, by the order establishing a financial institution under section 15, prescribe the authorised capital of the financial institution and the number and value of the shares into which the authorised capital shall be divided and notwithstanding the foregoing, the authorised capital of a financial institution which is a licensed financial institution shall at no time be less than the minimum capital required under the Financial Institutions Act 1995 for such financial institution.

(2) The Government may subscribe for the amount of the shares of a financial institution or such part thereof as the Minister may, from time to time, determine whether at par or otherwise.

(3) Subject to this Act, but notwithstanding anything otherwise provided by law to the contrary, it shall be lawful for the Minister by order to confer authority on co-operative societies registered under the Co-operative Societies Act (except in so far as they are by their rules prohibited from so doing) and such other bodies corporate as may be prescribed by order of the Minister (except in so far as any such corporate body is by any provision of its constitution or of the instrument constituting it prohibited from so doing) to subscribe for and hold shares in a financial institution.

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(4) The Minister may, on the recommendation of the directors of a financial institution, by order increase the authorised share capital of the financial institution.

(5) The order mentioned in subsection (1) or (3) may include provision relating to the allotment and subscription of shares (including the subscription for shares by instalments and the voting

rights of the holder of shares so subscribed at meetings of the shareholders of the financial institution) and matters incidental thereto.

30. (1) The shares of a financial institution shall be registered and transferable in the books of the financial institution.

Share register and transfer of shares.

(2) The directors of a financial institution shall be entitled without assigning any reason to decline to accept any co-operative society or other corporate body mentioned in section 28(3) as the transferee of any share.

31. (1) A person who purports to deal with a financial institution shall not, in the matter of any transaction in that behalf, be affected by any procedural defect relating to the conferment of any authority by the financial institution in general meeting, or by the directors or any committee thereof, for the purposes of participation by the financial institution in such transaction.

Persons dealing with a financial institution.

(2) Nothing in subsection (1) shall entitle any person to recover from a financial institution any debt, or to enforce against the financial institution any obligation or liability, or otherwise to treat the financial institution as bound by any transaction, if he has, in connection therewith, been guilty of or participated or acquiesced in a fraud committed upon the financial institution.

32. (1) A financial institution may, with the approval of the Minister, borrow such sums as may be required by the institution to fulfil any of its obligations or to discharge any of its functions and the directors of a financial institution may exercise all the powers of the institution to borrow money, to mortgage or charge the undertaking, property and uncalled capital, or any part thereof, and to issue debentures, debenture stock, and other securities whether outright or as security for any debt, liability or obligation of the financial institution or of any third party:

Borrowing powers of a financial institution.

Provided that the amount for the time being remaining undischarged of moneys borrowed or secured by the directors as aforesaid (apart from temporary loans obtained from other institutions

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licensed or otherwise authorised by law to carry on banking business in Guyana in the ordinary course of business) shall not at any time, without the previous sanction of the Minister, exceed the nominal amount of the share capital of the financial institution for the time being issued, but nevertheless no lender or other person dealing with the financial institution shall be concerned to see or inquire whether this limit is observed. No debt incurred or security given in excess of such limit shall be invalid or ineffectual except in the case of express notice to the lender or the recipient of the security at the time when the debt was incurred or security given that the limit hereby imposed had been or was thereby exceeded.

(2) Nothing in subsection (1) shall be construed as applying to the deposit liabilities (if any) of the financial institution.

Guarantee by the Minister of borrowings by a financial institution and repayment of sums to meet obligations under guarantees.

33. (1) With the approval of the National Assembly, the Minister may in writing in the name of the Government guarantee on such conditions as he may think fit, the payment of the principal and of interest on any authorised borrowings of a financial institution.

(2) Where the Minister responsible for finance is satisfied that there has been default in the repayment of any principal monies or interest guaranteed under the provisions of this section, the amount shall be charged on the Consolidated Fund and he shall direct the repayment out of the Consolidated Fund of the amount in respect of which there has been such default.

(3) The financial institution shall make to the Accountant General, at such times and in such manner as the Minister may direct, payments of such amounts as may be so directed in or towards repayment of any sum issued in fulfilment of any guarantee given under this section, and payments of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Minister may direct, and different rates of interest may be directed as respects different sums and as respects interest for different periods.

(4) With respect to the guarantee of any authorised borrowings of a financial institution which is a licensed financial institution, the Minister, prior to the giving of a guarantee under subsection (1), also

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shall consult with the Bank as to whether the giving of such guarantee is necessary and appropriate for the protection of depositors and the promotion of the objectives of the Financial Institutions Act 1995 and the Bank of Guyana Act 1995.

(5) The power to give guarantees conferred by subsection (1) is in addition to any like power conferred by any other law.

34. (1) Monies standing at the credit of a financial institution may, from time to time, be invested in securities approved either generally or specifically by the Administration and the financial institution may, from time to time, with the approval of the Minister, sell all or any of such securities.

Investments of a financial institution.

(2) Notwithstanding subsection (1), investments made by a financial institution which is a licensed financial institution shall be subject to such limitations on investments in securities as may be provided under the Financial Institutions Act 1995.

35. (1) Subject to such conditions as it may deem fit to impose, and as otherwise permitted by the Financial Institutions Act 1995 or by any other law, a financial institution may, out of its funds and resources, make loans in accordance with the provisions of this Act in the exercise of its functions under this Act.

Power of a financial institution to make loans.

(2) It shall be a condition of every loan made to a co-operative society or other body corporate mentioned in section 28(3) by the financial institution which may be established under this Act as the successor to the Guyana National Co-operative Bank that the borrower holds paid-up shares in the financial institution to an amount equal in value to at least five per cent of the loan.

36. In making loans a financial institution, to the extent permitted under any other law, may charge such rate of interest as it deems fit.

Interest on loans made by a financial institution.

37. (1) Subject to section 34(2), no loan made by a financial institution under this Act shall be applied otherwise than for such purposes as may be authorised by the financial institution.

Application of loan made by a financial institution.

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(2) If any loan made by a financial institution under this Act or any part of such loan has been misapplied the financial institution may—

(a) where such loan has been secured by mortgage, by notice in writing addressed to the mortgagor, recall the said loan or any part thereof and may require the loan or that part together with any interest due on such loan or part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the loan may thereupon be realised;

(b) where such loan has been secured otherwise than by way of mortgage, by notice addressed to the borrower, request the loan or any part thereof on the date of the notice to be repaid on a date to be specified in the notice and in default of payment on such specified date any security given for the purpose of the loan may thereupon be realised.

(3) The powers conferred by subsection (2) shall be in addition to the powers conferred by any other provisions of this Act.

Suspension of payment of principal and interest and power to extend time.

38. A financial institution may—

(a) postpone the payment of any sum due to it as principal and interest in respect of a loan made by it upon such terms and conditions for the carrying out of the purposes for which such loan was made and for the ultimate repayment of such principal or payment of such interest as it may deem necessary;

(b) from time to time, extend the period for the repayment of any loan, or compound or release any loan or any part thereof subject to such terms and conditions as it may deem fit.

Repayment of loan before due date.

39. A financial institution may at any time accept payment of the whole or any part of the amount representing the principal of a loan and interest thereon before the time when such payment is due, upon such terms and conditions as it may think fit.

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40. (1) It shall be a condition in every agreement for any loan made by a financial institution for the cultivation of crops and the expenses of reaping and making merchantable such crops, that all the crops and produce reaped or gathered from the land and the by-products thereof shall, until such loan has been repaid, be dealt with and disposed of as the financial institution may direct, and, until so disposed of, shall be held by the person obtaining the loan in trust for the financial institution. Any person to whom a loan has been made, who disposes of any such crops or produce or by-products except in the manner directed by the financial institution or by this Act, is liable on summary conviction to a fine of five hundred dollars and to imprisonment for a term of six months.

Power of a financial institution to dispose of crops.

(2) It shall be a condition in every such agreement that the financial institution may enter agreement with any person for the disposal of any crop or produce or any by-products thereof belonging to any person to whom loans have been made under the provisions of this Act; the last-mentioned agreement shall provide for the sale without undue delay of such crop or produce and the immediate payment to the financial institution of the proceeds of such sale or such part thereof as the financial institution shall think fit to the credit of the last-mentioned person.

(3) Any person so entrusted with the disposal of any crop or produce or by-products thereof of any person obtaining a loan under the provisions of this Act who shall fail to pay the proceeds of sale to the financial institution as provided in subsection (2) is liable on summary conviction to a fine of five hundred dollars and to imprisonment for a term of six months.

(4) This section does not apply to any paid reserved by agreement as rent in lieu of payment in cash of the annual rent by a tenant or affected by a specified condition under the provisions of the Rice Farmers (Security of Tenure) Act which agreement or condition is in force at the date of the loan made by the financial institution; and, subject to the foregoing provisions, the exercise by the financial institution of any of its powers under this section shall not entitle a landlord to give his tenant notice to quit his rice land.

c. 69:02

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Mortgages and charges to be prepared by financial institution.

41. (1) Every mortgage to secure a loan and every instrument creating a charge under the provisions of this Act shall be prepared by the financial institution. The person to whom the loan is made shall pay the legal charges in connection therewith and all necessary disbursements.

(2) For the purpose of effecting security for the repayment of a loan made by a financial institution and the interest payable thereon, it shall be lawful for the borrower obtaining a loan to create by instrument in writing in favour of the financial institution a charge on movable or immovable property belonging to the borrower as the financial institution may approve and specified in the instrument creating the charge.

(3) A charge may be made in favour of a financial institution with such terms and conditions as may be prescribed and specified therein and, notwithstanding the provisions of any law, such prescription may include the creation of offences and penalties for breach of any such term or condition and the exclusion or modification of the application of any other enactment with respect to the charge; where the charge is created on immovable property the Registrar of Deeds shall upon such notice as may be prescribed annotate the charge against the title issued in respect of the property in the same manner as if the property were subject to a mortgage passed before the High Court.

Examination as to application of moneys.

42. (1) Where a financial institution has made a loan of money under the provisions of this Act it may—

(a) from time to time, make or cause to be made such examination as may be necessary to ensure that the loan is being applied to the purposes for which it is made;

(b) require financial statements in such detail as it may determine to be submitted by the borrower in receipt of the loan quarterly or at shorter intervals at the discretion of the financial institution and the borrower shall comply with such request.

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(2) The financial institution may authorise in writing any of its officers or any other person to make such examination, and the borrower in receipt of the loan shall produce to such officer or person all the books, documents and other matters and things necessary for the purposes of the examination.

(3) Any person who contravenes any of the provisions of paragraph (b) of subsection (1) or any of the provisions of subsection (2), is liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of six months.

43. Where upon any examination made under section 41 it appears to the financial institution that any sum being the whole or any part of the loan has not been applied for the purposes for which the loan was made the financial institution may order that any such sum be, within the time mentioned in the order, applied to such purposes or that such sum together with any interest due thereon on the date of the order be repaid to the financial institution within the time mentioned in the order, and any sum with the interest thereon so ordered to be repaid to the financial institution shall thereupon become a debt due to the financial institution.

Order of a financial institution upon examination.

44. At any time after the approval of a loan and before the actual payment of the money a financial institution may at its discretion and without assigning any reason therefor cancel or modify such approval and withhold payment of the whole or a portion of the money.

Cancellation or modification of approval of loan.

45. In any case where a financial institution has approved the making of a loan by instalments and any part of such loan has not yet been advanced if—

Power of financial institution to direct that any part outstanding of an approved loan be not paid.

(a) any sum of money, whether principal or interest, due in respect of any loan made under this Act remains unpaid;

(b) in the opinion of the financial institution, any prior loan made under this Act has not been applied for the purpose for which it was made or has not been carefully and economically expended;

(c) the borrower has become insolvent or has been sentenced to a term of imprisonment without the option of

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the payment of a fine or has assigned his property for the benefit of creditors;

(d) there has been a breach or non-observance of any condition attached to the loan; or

(e) in the opinion of the financial institution, the sums already advanced were not applied to the purposes for which the loan was made within a reasonable time,

the financial institution, without prejudice to any other remedy, may refuse to advance any portion of the loan still outstanding.

Enforcement of securities.

46. Where any property mortgaged as security for a loan made by a financial institution is sold for the purposes of the enforcement of the security the financial institution may buy such property or sell or otherwise dispose of it as it deems fit.

Charge on property and priority of loan.

47. Where a loan is made by a financial institution on the security of a mortgage of any property, whether with or without any other security, the property, from and after the date of the mortgage, shall be charged with the payment of such loan and interest as in the mortgage mentioned, in priority, save in so far as may be otherwise specified in the mortgage, to every other debt, mortgage or charge whatever affecting the property, except any statutory claim within the meaning of the Deeds Registry Act or any loan due to any creditor which has been made in good faith before the loan made by the financial institution and which has been secured by a duly registered mortgage of the property executed to a person who is entitled as a *bona fide* creditor to the repayment thereof with interest.

c. 5:01

Offences in respect of loans.

48. (1) Any person who—

(a) obtains a loan from a financial institution under the provisions of this Act by means of any false representation;

(b) wilfully fails to disclose any material information within his knowledge in making application for a loan from a financial institution;

(c) wilfully applies any loan made to him by a financial institution under the provisions of this Act to any purpose other than the purpose for which the loan was made; or

(d) having obtained a loan from a financial institution under the provisions of this Act, wilfully destroys any security given in relation to any such loan,

is liable on summary conviction to a fine of one thousand dollars and to imprisonment for a term of twelve months.

(2) In any criminal proceeding in respect of an offence under subsection (1)(c) the onus of proving that he acted in good faith and without knowledge that he was not so entitled so to apply the loan or any part thereof shall be upon the person charged.

49. (1) Every financial institution shall keep proper accounts and other records in relation to its business and the directors shall prepare annually a statement of account in a form satisfactory to the Minister being a form which shall conform with established accounting principles.

Accounts and
audit.

(2) The accounts and records shall be audited by an auditor appointed by the Administration.

(3) So soon as the accounts of a financial institution have been audited, the financial institution shall send the statement of its accounts referred to in subsection (1) to the Minister and to the Administration together with a copy of any report made by the auditor on that statement or on the accounts of the financial institution.

(4) The fees of the auditor and any other expenses of the audit shall be subject to the approval of the Administration and shall be paid by the financial institution.

(5) The auditor shall be entitled on the direction of the Minister or the Administration, at all reasonable times to examine the accounts and other records in relation to the business of the financial institution.

(6) The directors, officers and other employees of a financial institution shall grant to the auditor appointed under this section to audit the accounts of the financial institution access to all books,

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documents, cash and securities of the financial institution and shall give to him on request all such information as may be within their knowledge in relation to the operations of the financial institution.

(7) The auditor appointed under this section shall have power to summon and examine all persons whom he shall think fit to examine for the purpose of obtaining information in connection with the examination and audit of the accounts of the financial institution and respecting all other matters and things whatever necessary for the due performance of the functions vested in him and if any person summoned as aforesaid is not a public officer or an officer or other employee of a financial institution or of any public corporation or other body corporate in which the controlling interest vests in the State he is entitled to payment for his attendance as if he were a witness attending a legal proceeding in obedience to a summons issued at the instance of the State.

(8) Any person summoned under subsection (7) who without reasonable excuse makes default in obeying the summons is liable on summary conviction to a fine of ten thousand dollars or, in default of payment, to imprisonment for three months.

(9) A financial institution may write off bad debts.

(10) Subject to the provision of section 33 of the Financial Administration and Audit Act (which mandates the audit of public corporations and certain other corporate bodies by the Auditor General), a financial institution which is a licensed financial institution shall be audited by an auditor qualified in accordance with the Financial Institutions Act 1995 and who, in satisfaction of the requirements of subsection (3), performs such reviews and makes such reports as are required under the Financial Institutions Act 1995 in respect of licensed financial institutions. Such auditor shall exercise in addition to any other functions and powers otherwise conferred on him, those functions and powers provided in subsections (5), (6) and (7).

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50. (1) So soon as its accounts have been audited, in accordance with the provisions of section 48, a financial institution shall submit to the Minister a report on its operations throughout that year, together with a statement of its accounts so audited.

Annual reports.

(2) A copy of the report mentioned in subsection (1) together with a copy of the report of the auditor shall be printed and shall be—

(a) presented to the annual general meeting of shareholders of the financial institution;

(b) laid before the National Assembly before the 30th day of June in the year following that to which the reports mentioned in this section relate.

51. (1) A financial institution shall maintain a reserve fund and shall, out of the net surplus for each year and before any dividend is declared, transfer to that fund a sum equal to not less than twenty-five per cent of such surplus whenever the amount of the reserve fund is less than the paid-up capital of the financial institution.

Reserve Fund.

(2) Notwithstanding any requirement of the Financial Institutions Act 1995 to the contrary, the provisions of this section shall apply with full force and effect to a financial institution which is a licensed financial institution.

(3) If the reserve fund is in any year insufficient to cover any net loss of the financial institution recorded in its Profit and Loss Account, an amount equivalent to the deficiency is hereby charged on the Consolidated Fund:

Provided that if in any succeeding year any net surplus accrues to the financial institution there shall be paid into the Consolidated Fund by the financial institution, from time to time, such sum as may be agreed with the Minister together with interest thereon at such rate to be determined by him until the aforesaid amount is fully repaid.

(4) For the purposes of this section, net surplus shall be determined by deducting from gross income all expenses together with allowances for depreciation of assets, contributions to staff benefit

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funds, provision for bad and doubtful debts, and such other contingencies and accounting provisions as are usually made by comparable financial institutions.

Application of certain enactments to a financial institution.
c. 85:01
c. 85:02
c. 89:01
c. 91:02

52. (1) Except as otherwise specifically provided in this Act or in any other law by language to such effect and not merely by implication, the Financial Institutions Act 1995 and the Bank of Guyana Act 1995 shall apply with full force and effect, as provided in such Acts, to financial institutions which are licensed financial institutions.

(2) With respect to financial institutions other than licensed financial institutions, the Minister may by order made under section 15 establishing a financial institution or reconstituting an institution mentioned in section 61(1), or in any subsequent order made under section 15, apply the provisions of the law for the time being relating to companies, the Insurance Act, or any other law in whole or in part to such financial institutions, and in such manner and to such extent as shall be provided in such order.

PART V

MISCELLANEOUS

General Meetings of shareholders and other specified persons.

53. (1) The Annual General Meeting of the shareholders of a financial institution, and of such other persons as may be specified in an order made under section 15(3)(b) (hereinafter in this section and in sections 53 and 54 referred to as “other specified persons”) shall be convened by its directors not later than four months after the end of its financial year and on such date and at such time and place as they may determine.

(2) All general meetings, other than the Annual General Meeting, shall be called special general meetings.

(3) The directors of a financial institution shall give such notice as they consider adequate to all shareholders of a financial institution and other specified persons of the date, time and place of a general meeting.

(4) The quorum at a general meeting shall be twenty of the shareholders or a majority thereof where the number of shareholders is less than thirty-one and such number of other specified persons if any as the Minister may determine and if there is no quorum at the meeting called, the meeting shall be adjourned for the time on the same day of the week following whereupon the shareholders and other specified persons present shall form a quorum.

(5) The Chairman of the financial institution, or in his absence, the Deputy Chairman shall be the Chairman of general meetings; in the absence of the Chairman and the Deputy Chairman from a general meeting the other directors present thereat may elect one of their number to preside at the meeting.

(6) Decisions of a general meeting shall be by a simple majority and, if approved by the Administration, shall be binding on the financial institution, the directors, and on all officers and other employees of the financial institution.

(7) For the purposes of this section, the financial year of a financial institution shall be the period of twelve months beginning on the first day of January in any year or such other date as the Minister may decide but the first financial year of a financial institution may be shortened or extended, as the case may be, for a period not exceeding six months.

54. (1) The directors of a financial institution may call a special general meeting of shareholders of the financial institution and of other specified persons whenever they consider it necessary or desirable to do so if adequate notice as provided in section 52(3) is given and the notice contains a statement of the intended business of the meeting.

Special general meetings.

(2) A special general meeting shall deal only with the business for which it is called and may take decisions only with respect to such business.

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(3) The directors of a financial institution shall be obligated to call a special general meeting on receipt of a petition therefor carrying the signatures of the duly authorised representatives of shareholders representing not less than ten per cent of the paid-up share capital of the financial institution.

(4) A petition under subsection (3) shall contain the following information—

(a) a statement of the business to be discussed at the meeting;

(b) a duly executed affidavit certifying that the signatures on the petition are authentic signatures of the duly authorised representatives of the shareholders whose signatures they purport to be;

(c) an indication of the number of shares held by the shareholders mentioned in paragraph (b).

Voting rights
at general
meetings.

55. Every shareholder of a financial institution, and every person who is a specified person pursuant to an order made under section 15 shall be entitled to one vote at general meetings of the shareholders of the financial institution, and of other specified persons.

Merger of
financial
institutions.

56. (1) The Minister may, by order which shall be subject to affirmative resolution of the National Assembly, provide for the merger of two or more financial institutions.

(2) An order made under subsection (1) may—

(a) exclude the application to any such merger of any provision of this Act;

(b) modify any provision of this Act in its application to any such merger;

(c) contain particular provisions in relation to any such merger, including provisions relating to the vesting of property, the transfer of assets and liabilities, monetary arrangements and the preservation of rights and liabilities, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law;

(d) contain such provisions that may extend to the property or interests of a subsidiary of a financial institution.

57. (1) The Minister may, by order which shall be subject to affirmative resolution of the National Assembly, dissolve a financial institution.

Dissolution of a financial institution.

(2) An order dissolving a financial institution may, notwithstanding any enactment (including any subsidiary legislation made thereunder) or any rule of law, include such provisions relating to the vesting of property, the transfer of assets and liabilities, monetary arrangements, the preservation of rights and liabilities existing immediately prior to the dissolution as well as such other provisions as the Minister considers necessary or expedient to give full effect to the dissolution.

(3) Any dissolution pursuant to this section of a financial institution shall be treated as a voluntary winding up of such institution under the Financial Institutions Act 1995.

(4) Nothing in this section shall in any way impair or restrict the authority of the Bank under the Financial Institutions Act 1995 or the Bank of Guyana Act 1995 to exercise those powers conferred on the Bank thereunder with respect to any class of licensed financial institutions, including financial institutions created under this Act.

58. (1) Where, with the approval of the appropriate authority, an officer—

Superannuation benefits of public officers and teachers employed with the Administration or in financial institutions.

(a) is seconded or temporarily transferred from a pensionable office within the meaning of the Pensions Act to an office with the Administration or with a financial institution, section 5 of that Act shall apply to him as if his service in the office with the Administration or the financial institution, as the case may be, were service in a public office;

(b) is transferred from a pensionable office within the meaning of the Pensions Act to a substantive appointment in an office with the Administration or with a financial

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institution, his service with the Administration or the financial institution, as the case may be, shall be other public service within the meaning of, and for the purposes of, such provisions in relation thereto as are contained in the Pensions Act.

c. 39:05 (2) Where a teacher who has done qualifying service within the meaning of the Teachers Pensions Act is, with the approval of the appropriate authority—

9 of 1971 (a) seconded or temporarily transferred from his pensionable office as a teacher to an office with the Administration or with a financial institution, section 5 of the Pensions Act (as it applies *mutatis mutandis* to a teacher by section 7C of the Teachers Pensions (Amendment) Act 1971) shall apply to him as it applies in the case of a public officer;

(b) is transferred from his pensionable office as a teacher to a substantive appointment in an office with the Administration or with a financial institution, his service with the Administration or with the financial institution, as the case may be, shall be treated as if it were other public service within the meaning of and for the purposes of, such provisions in relation thereto as are contained in, the Pensions Act and as if he were a public officer to whom the Pensions Act applies.

(3) In this section, “appropriate authority” means the person or authority vested by law with power to appoint the officer to the pensionable office held by him (and to which the Pensions Act applies) or to appoint the teacher to the office held by him as a teacher, as the case may be.

Payment of superannuation benefits by financial institutions.

59. Save where other provision is made by a financial institution for the payment of pension, gratuity or other allowance in respect of their service with a financial institution to officers and other employees of the financial institution on their retirement therefrom, the amount of the pension, gratuity or other allowance payable by the financial institution to any such officer or employee in respect of such service

shall be computed in accordance with the law or other rules applicable to the grant of pension, gratuity or other allowance to public officers as if for that purpose the service of the officer or other employee with the financial institution were service in the public service.

60. Any minutes made of meetings of a financial institution shall, if duly signed by the Chairman or the Deputy Chairman or other member elected to preside at a meeting of the financial institution, without further proof of any other matter or thing, be receivable in all legal proceedings as *prima facie* evidence of the proceedings of the financial institution of which minutes have been made and that every meeting of the financial institution in respect of the proceeding of which minutes have been so made to have been duly convened and held.

Minutes receivable in evidence.

61. No written law prescribing a period of limitation within which a sum of money may be recovered shall apply to a claim for a sum of money by a financial institution.

Limitation provisions excluded.

62. Subject to this Act, the Minister may make regulations for carrying into effect the purposes of this Act and, in particular, but without prejudice to the generality of the foregoing, regulations may be made in relation to the regulation and management of the affairs of a financial institution.

Power to make regulations.

PART VI

CERTAIN BANKS TO BE ESTABLISHED AS
CO-OPERATIVE FINANCIAL INSTITUTIONS

63. (1) The following institutions, that is to say—

- (a) the Guyana National Co-operative Bank;
- (b) the Guyana Agricultural Co-operative Development Bank;
- (c) the Guyana Co-operative Mortgage Finance Bank;
- (d) the GNCB Trust Company Limited,

Reconstitution of certain Banks as co-operative financial institutions.

may be reconstituted by being established as financial institutions by order under section 15.

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(2) An order under section 15 reconstituting the Guyana National Co-operative Bank and the GNCB Trust Company Limited by establishing them as financial institutions under this Act may, in addition to the provisions which may be included therein pursuant to section 15(12), contain provisions relating to the allotment of shares in the financial institutions so established to the shareholders of the said Bank and the said Company, respectively.

(3) Upon the coming into force of an order establishing as a financial institution under this Act—

- c. 85:03 (a) the Guyana National Co-operative Bank, the Guyana National Co-operative Bank Act shall be repealed;
- c. 19:05 (b) the Guyana Agricultural Co-operative Development Bank or the Guyana Co-operative Mortgage Finance Bank, the Public Corporations Act and the respective orders establishing them as public corporations thereunder shall cease to have effect in relation to the respective Banks, anything in the said Act to the contrary notwithstanding;
- c. 89:01 (c) the GNCB Trust Company Limited, the Companies Acts shall, notwithstanding any law, cease to have effect in relation to the said Company,

without prejudice, however, to anything for which provision is made in any such order pursuant to subsection (2) or subsection (12) of section 15.
