

Namibia

Building Societies Act, 1986

Act 2 of 1986

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Building Societies Act, 1986

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Annotated Statutes

Building Societies Act, 1986
Act 2 of 1986

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Commenced on 1 April 1986

**[This is the version of this document from 20 May 2019 and
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[Amended by Building Societies Amendment Act, 1987 (Act 15 of 1987) on 1 July 1987]
[Amended by Building Societies Amendment Act, 1990 (Act 25 of 1990) on 19 December 1990]
[Amended by Building Societies Amendment Act, 1992 (Act 8 of 1992) on 15 April 1992]
[Amended by Building Societies Amendment Act, 1994 (Act 25 of 1994) on 11 November 1994]
[Amended by Married Persons Equality Act, 1996 (Act 1 of 1996) on 15 July 1996]
[Amended by Deposit Guarantee Act, 2018 (Act 16 of 2018) on 20 May 2019]

ACT

To consolidate and amend the laws relating to the registration, incorporation, regulation, management and dissolution of building societies.

(English text signed by the Administrator-General on 27 March 1986)

BE IT ENACTED by the National Assembly, as follows:-

**[Act 25 of 1990 makes the following substitutions throughout the Act:
“Central Bank” for “Reserve Bank”; and “Minister” for “Cabinet”.]**

Chapter I **INTRODUCTORY**

1. Definitions

In this Act, unless the context otherwise indicates -

“**advance**” includes one or more advances on the security of one property or of two or more properties jointly;

“agent” means a representative of a society with express authority in regard to the acceptance of money in respect of deposits or shares or repayments of advances or loans or the receipt of applications in respect of advances or loans on behalf of that society;

“approved stocks” means stocks issued under section 27(1)(bb) of the State Finance Act, 1982 (Act [1 of 1982](#)), and such other stocks as the Treasury may approve;

[The State Finance Act [1 of 1982](#) has been replaced by the State Finance Act [31 of 1991](#).]

“bank” or **“banker”** means a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act [23 of 1965](#));

[The Banks Act [23 of 1965](#) has been replaced by the Banking Institutions Act [2 of 1998](#).]

“board”, in relation to any society, means the board of directors or the body managing the business of the society, by whatever name it may be called;

“building society” means an association of persons the principal object of which is the making, out of funds derived from the issue of shares to and the acceptance of deposits from the public or from subscriptions by members, of advances for the purpose of erecting, acquiring and improving dwelling houses upon the security of the mortgage of urban immovable property;

“Central Bank” means the Bank of Namibia established by section 2 of the Bank of Namibia Act, 1990 (Act [8 of 1990](#));

[definition of **“Central Bank”** inserted by Act [25 of 1990](#)]

“court”, in relation to a society, and without prejudice to the jurisdiction of any magistrate’s court in relation to any offence in terms of this Act, means the Supreme Court of South West Africa;

“director” includes an alternate director and any person occupying a position on the board of a society, by whatever name he may be called;

“discount house” means an institution registered or deemed to be registered as a discount house under the Banks Act, 1965 (Act [23 of 1965](#));

[The Banks Act [23 of 1965](#) has been replaced by the Banking Institutions Act [2 of 1998](#).]

“dwelling house” includes a unit as defined in section 1 of the Sectional Titles Act, 1971 (Act [66 of 1971](#)), used or intended to be used for residential purposes;

[The Sectional Titles Act [66 of 1971](#) has been replaced by the Sectional Titles Act [2 of 2009](#).]

“executive officer”, in relation to a society, means a manager, a deputy manager or an assistant manager of such society;

“final registration” means the final registration of a society under section 4(7);

“firm” includes any partnership and any company or other corporate body;

“fixed deposit” means a deposit fixed for a period of not less than twelve months;

“fixed period share capital” means the aggregate amount paid up on shares issued under section 27(1)(b);

“fixed term mortgage of immovable property” means a mortgage of immovable property other than a reducible mortgage of immovable property;

“general reserve” means the reserve referred to in section 34;

“indefinite share capital” means the aggregate amount paid up on shares issued under section 27(1)(a);

“Land Bank” means the Land and Agricultural Bank of South West Africa;

“liquid assets” means the aggregate amount of -

- (a) Central Bank Notes and subsidiary coin;
- (b) deposits, withdrawable on demand, with a bank;
- (c) loans to discount houses, repayable on demand;
- (d) bills of exchange or debentures issued under section 27(1)(cc) of the State Finance Act, 1982 (Act [1 of 1982](#));

[The State Finance Act [1 of 1982](#) has been replaced by the State Finance Act [31 of 1991](#).]

- (e) stocks and bonds issued under section 27(1)(bb) of the State Finance Act, 1982 (Act [1 of 1982](#)), with a maturity, to the latest redemption date, of not more than three years;

[The State Finance Act [1 of 1982](#) has been replaced by the State Finance Act [31 of 1991](#).]

- (f) bills issued by the Land Bank;
- (g) debentures of the Land Bank with a maturity of not more than three years;
- (h) acceptances of a banking institution which are discountable by the Central Bank;
- (i) self-liquidating bills or promissory notes arising from the movement of goods, with a maturity of not more than one hundred and twenty days, or in the case of agricultural bills, six months, and which are discountable by the Central Bank;
- (j) stocks of the Central Bank which on that date had a maturity, to the latest redemption date of not more than three years; and
- (k) such other assets as the registrar may by notice in the Official Gazette approve for the purposes of this definition;

“liquidator”, in relation to a society, means a person appointed to conduct the winding-up of that society;

“long-term liability”, in relation to any date, means a liability which is payable after the expiration of a period of more than one hundred and eighty days as from that date or which on that date is, subject to more than one hundred and eighty days notice before becoming payable;

“medium-term liability”, in relation to any date, means a liability which is payable after the expiration of a period of more than thirty-one days but not more than one hundred and eighty days as from that date, or which on that date is subject to more than thirty-one days’ but not more than one hundred and eighty days’ notice before becoming payable, and includes -

- (a) the aggregate net amount a society is committed to pay out in respect of advances granted;
- (b) the aggregate amount of cash accepted by a society in terms of section 21(1)(d)(iii); and
- (c) savings deposits;

“member”, in relation to any society, means a shareholder in that society;

“Minister” means the Minister of Finance;

[definition of “Minister” inserted by Act [25 of 1990](#)]

“mortgage of urban immovable property” includes the cession of a registered lease having not less than twenty years to run;

“officer”, in relation to a society, means any director, local director or local committee member, or employee of the society;

“owing”, in relation to any advance, means owing in respect of the capital amount advanced together with interest due thereon;

“paid-up share” means a share paid for in full at the time of application therefore;

“paid-up share capital” means the aggregate amount of the share capital paid up;

“prescribed” means prescribed by or under this Act;

“prescribed fee” means a fee prescribed in the First Schedule to this Act or in that Schedule as amended or added to under section 75(1) or (2);

“prescribed form” means a form prescribed under section 78;

“provisional registration” means registration other than final registration;

“reducible mortgage of immovable property” means a mortgage of immovable property the terms of which provide for the redemption of the capital amount advanced by regular equal payments which include any interest due on any amount outstanding;

“registered”, in relation to any society, means provisionally or finally registered under this Act, and **“registration”** has a corresponding meaning;

“registrar” means the registrar or deputy registrar of building societies appointed under section 2;

“regulation” means a regulation made and in force under this Act;

“savings account” means an account which a depositor maintains with a society and in which he may not keep a larger credit balance than is determined by the rules of the society and from which he may not without the consent of the society, make a withdrawal at shorter notice, according to the amount to be withdrawn, than is determined by the rules of the society;

“savings deposit” means a credit balance in a savings account;

“secretary”, in relation to a society, includes a manager, deputy manager or assistant manager, or other principal executive officer of the society, by whatever name he may be called;

“shareholder”, in relation to any society, means a person who holds shares therein, whether fully or partly paid and whether or not held by the society as security for an advance or a loan;

“short-term liability”, in relation to any date, means a liability which is payable not more than thirty-one days as from that date or which on that date is subject to not more than thirty-one days' notice before becoming payable, and includes transmission deposits;

“society” means a building society registered under this Act;

“special resolution” means a resolution -

- (a) passed by not less than three-fourths of those members who are personally present or represented by proxy and vote in accordance with the rules of the society at a special general meeting called for that purpose; and
- (b) the terms and effect of which and the reasons for which have been fully set out in the notice convening the meeting referred to in paragraph (a);

“subscription share” means a share subscribed for by periodical contributions of a fixed amount;

“transmission account” means an account which a depositor maintains with a society and from which the depositor may withdraw amounts on demand and the society, according to instructions by the depositor, may make payments to other persons and transfer amounts to any other account;

“transmission deposit” means a credit balance in a transmission account;

“Treasury” means any officer of the Department of Finance authorised by the Minister to perform any function assigned to the Treasury by this Act;

“urban immovable property” means -

- (a) Any piece of land registered as an erf, lot or stand in a deeds registry, and situated in an approved township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963), and includes every defined portion, not intended to be a public place, of a piece of land laid out as such a township, whether or not it has been formally recognised, approved or proclaimed as a township;
- (b) any small holding or other small piece of land situated in the vicinity of a township referred to in paragraph (a) and in an area which is or is intended to be primarily a residential area;
- (c) any lease in longum tempus of any ground referred to in paragraph (a) or (b), provided such lease has not less than twenty years to run;
- (d) any land granted in terms of section 18(4) of the Development Trust and Land Act, 1936 (Act [18 of 1936](#));

**[The Development Trust and Land Act [18 of 1936](#) was
repealed by the Communal Land Reform Act [5 of 2002](#).]**

- (e) any other land or rights thereover approved by the registrar either generally or specifically;

“value of share” means the amount standing to the credit of a share in the books of a society.

2. Appointment of registrar and deputy registrar of building societies

- (1) The Central Bank shall appoint an officer from among its officers or employees to be styled the registrar of building societies, who shall under the control of the said bank, and subject to appeal to the Minister -
 - (a) decide the question as to whether or not any association of persons is a building society; and
 - (b) exercise all such other powers and perform all such other duties as are conferred upon and assigned to the registrar by this Act or any other law.
- (2) The Central Bank may appoint an officer from among its officers or employees to be styled the deputy registrar of building societies, who may, subject to the control and directions of the register do anything that may lawfully be done by the registrar.
- (3) The registrar may with the approval of the Central Bank -
 - (a) delegate to an officer or employee of the Central Bank any power conferred upon the registrar by or under this Act;
 - (b) authorize any such officer or employee to perform any duty or function assigned to the registrar by or under this Act.
- (4) A delegation under subsection (3)(a) shall not prevent the exercise of the relevant power by the registrar himself or herself.
- (5)
 - (a) The Central Bank may, whenever the office of registrar of building societies becomes vacant or the said registrar is for any reason incapable to act as such, appoint the deputy registrar or any other competent officer or employee of the said bank to act as registrar of building societies for the duration of such vacancy or such incapability.
 - (b) While the officer or employee appointed under paragraph (a) so acts as registrar of building societies, he or she shall have all the powers and perform all the duties of the registrar of building societies.
- (6)
 - (a) Every appeal to the Minister in terms of subsection (1) shall be prosecuted in the manner and within the period prescribed by regulation.

- (b) The decision of the Minister on appeal in respect of any matter referred to in subsection (1) (a) of this section, section 4(5) or (6) or section 12(3), shall be subject to appeal to the court, provided such appeal is noted within three months after the decision of the Minister has been pronounced.

[section 2 substituted by Act 25 of 1990]

Chapter II

FORMATION AND REGISTRATION OF SOCIETIES

3. Formation of a society

- (1) No person shall establish a building society without the written permission of the registrar.
- (2) A building society may be established by any seven or more persons (hereinafter referred to as the founders) who shall subscribe their names to the rules agreed to by them for the government of such society after such rules have in draft form been submitted to and provisionally approved by the registrar.
- (3) The registrar shall not grant any permission for the establishment of a building society unless he has satisfied himself that the establishment of such a society will be in the public interest.
- (4) For the purposes of subsection (3) the registrar may require the persons intending to establish a building society to furnish him with such particulars and information as he may deem necessary and may require such persons or any of them to appear before him in person to furnish any further particulars or information that he may require.

4. Registration of societies

- (1) An application for the registration of a building society shall be lodged with the registrar in the prescribed form as soon as practicable after the establishment of the society.
- (2) The application shall be accompanied by two copies of the rules agreed to by the founders for the government of the society and signed by them and the intended secretary.
- (3) The rules shall be in the English or Afrikaans language or both and shall be either typewritten or duplicated or printed, and the original shall be signed by at least seven founders, and opposite every signature there shall appear in legible characters the full name, occupation and residential or business address of the subscriber and the number and type of shares he takes and the nominal value of such shares.
- (4) The registrar shall, after consideration of the said rules and such further information and arguments as may be submitted to him by such persons, decide whether according to its rules the society is or is not a building society.
- (5)
 - (a) If the registrar decides that the society is not a building society, he shall decline to register the society.
 - (b) Where the registrar decides that the society is a building society, he shall, upon payment to him of the prescribed fee, and provided he is satisfied that the society's rules comply with the requirements of this Act and are financially sound, and that the methods of transacting the business of the society as laid down in the rules are not undesirable, and, that the requirements of section 8 have been complied with, register the society provisionally in terms of this Act as a building society, issue the society with a certificate of provisional registration and together with such certificate return one copy of the rules, with his approval and the date of such registration of the society endorsed thereon, to the intended secretary of the society.

- (6) The certificate of provisional registration of a society shall be valid for a period of twelve months from the date of issue thereof, but the registrar may at any time before the expiry of such period or any extended period, in his discretion and subject to such conditions or limitations, not inconsistent with this Act, as he may deem desirable to impose, extend the period of validity of such certificate for further periods of twelve months each up to a maximum of seven years in all.
- (7) No society shall be registered initially otherwise than provisionally, but if the registrar is at any time while a society is provisionally registered satisfied that the society is in a financially sound condition and that the methods of transacting the business of the society are not undesirable, he shall register the society finally under this Act and issue a certificate of final registration to the society, and thereupon the society shall cease to be provisionally registered.
- (8) If at the expiry thereof the period of validity of a society's certificate of provisional registration is not extended or if after the expiry of the period of seven years referred to in subsection (6) the society is unable to satisfy the requirements for final registration, it shall forthwith cease to carry on the business of a building society and the board shall, subject to the provisions of this Act, arrange for the voluntary winding-up of the society.
- (9) Any person who in connection with an application for registration or the extension of the period of validity of the certificate of provisional registration of a society makes any false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties applicable in respect of the crime of fraud or falsitas.
- (10) A building society which immediately prior to the commencement of this Act was finally registered as a building society in terms of the Building Societies Act, 1965 (Act [24 of 1965](#)), shall be deemed to have been duly so registered under this Act.

5. Registered building society to be a body corporate

- (1) A society shall be a body corporate capable of instituting and defending any legal action in its registered name, of acquiring, owning, hiring, letting and alienating property and, subject to the provisions of this Act, of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules.
- (2) Whenever an association which is registered under the Companies Act, 1973 (Act [61 of 1973](#)), is registered as a society under this Act, the registrar shall notify the registrar of companies in writing of such registration, and upon receipt by the registrar of companies of such notice he shall delete the name of such association from the register of companies.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

6. Name of society

- (1) A building society shall not be registered under a name -
 - (a) under which any other building society, including a building society referred to in section 4(10) is registered;
 - (b) under which any building society, which has been taken over by any other registered building society, was at any time registered under this Act or the Building Societies Act, 1965 (Act [24 of 1965](#)), unless the registrar, after consultation with the society by which such building society was taken over, is satisfied that no reasonable ground of objection against registration under that name exists;
 - (c) which so closely resembles the name of a registered building society or a building society taken over as contemplated in paragraph (b), that the one is likely to be mistaken for the other; or
 - (d) under which a building society, carrying on business in any country or territory bordering the Territory, is registered or carrying on business under the laws of that country or territory.

- (2) The registrar may, except where the court otherwise directs, refuse to register a building society by a name which, in his opinion -
 - (a) is calculated to mislead the public;
 - (b) might offend any person or class of persons;
 - (c) might be contrary to the public's interest; or
 - (d) is suggestive of blasphemy or indecency.
- (3) If a society through inadvertence or otherwise is registered in conflict with the provisions of subsection (1) or (2), the registrar shall, upon becoming aware of the fact, in writing direct the society to change its name, and the provisions of section 9(5) shall apply mutatis mutandis in respect of any such change of name.
- (4) Any society which fails within sixty days of the date of a written direction from the registrar in terms of subsection (3) or within such further period as the registrar may in writing allow, or, in the case of a society which has within the said period or further period moved the court for an order setting aside the registrar's direction, within sixty days after a final decision upholding the registrar's direction, to change its name and to furnish the registrar with a suitable name to comply with such direction, shall be guilty of an offence.
- (5) No society shall without the approval of the registrar, use or refer to itself by a name other than the name under which it is registered or an abbreviation thereof or a literal translation thereof into the other language mentioned in section 4(3), but nothing in this subsection contained shall be construed as prohibiting the use by any society in the registered name of which the expression "building society", "mutual", "bouvereniging" or "onderlinge" occurs, of a name which consists of its registered name modified by the substitution therein for the expression in question of the corresponding expression in the other language mentioned in section 4(3) as used in this Act.
- (6) The words "building society" shall form part of the name under which any society is registered.

7. Certificate of registration to be conclusive

A certificate of registration of a society issued by the registrar shall, in the absence of proof of fraud, upon its mere production be conclusive evidence that all requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the society is a society duly registered under this Act.

8. Minimum paid-up share capital to be allowed to commence business

A society shall not commence business unless its paid-up share capital amounts to at least five hundred thousand rand, and any society which contravenes the provisions of this section shall be guilty of an offence.

9. Registrar may demand information from association of persons

- (1) The registrar may at any time by notice in writing require any association of persons, whether or not it is registered under any law relating to companies, and whether incorporated or not, which is not registered under this Act, and which he has reason to suspect is a building society, to transmit to him within a period stated in such notice, or within such further period as the registrar may allow, one copy of its rules duly certified as such by the secretary of the association and two of its directors or two of the other persons managing its affairs, together with one set of copies of the last annual accounts of the association certified by its auditors and such copies of its previous annual accounts so certified and such further particulars and information regarding the association as the registrar may require.

- (2) For the purposes of this section “rules” means any act, charter, deed of settlement, memorandum of association or other document by which the association is constituted and the articles of association or other document relating to the conduct of the business of the association.
- (3) The registrar may require the persons managing the affairs of such association or any of them to appear before him in person for interrogation and may at any time make or cause to be made such inspection of its books, accounts and records as he may consider necessary for the purpose of establishing whether the association is a building society or not.
- (4) If the registrar requires such association to be registered as a building society under this Act -
 - (a) all assets belonging to or held in trust for the existing association shall upon such registration vest in the society as registered without transfer or cession; and
 - (b) the society as registered shall assume all liabilities of the existing association:

Provided that such registration shall in no way deprive any creditor of the existing association who at the date of registration was not a member of the association, of any right or remedy which he immediately prior to such registration had against the existing association or any member or officer thereof.

- (5) Whenever in accordance with the provisions of this section an association is registered as a building society under a name other than that by which it has been known, the officer in charge of a deeds registry or other office in which is registered any deed or other document relating to any asset or right which in terms of subsection (4) devolves upon the society, shall upon production to him by the society of its certificate of registration and the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make such endorsements upon such deed or document and such entries in his registers as may be necessary by reason of the change of name.
- (6) Notwithstanding anything contained in the rules of the association in force prior to such registration or in any agreement entered into by the association prior to such registration, no person shall as from the date of such registration be deemed to be a member of the society unless he holds shares in the society, and the rights and privileges of every member of the society shall be determined in accordance with the provisions of this Act and the rules of the society as approved under this Act.
- (7) The provisions of sections 4, 5, 6, 7 and 8 shall mutatis mutandis apply to such an association.

10. Cancellation and suspension of registration

- (1) The registrar shall cancel the registration of a society -
 - (a) upon proof to his satisfaction that the society has ceased to exist; or
 - (aA) if the building society ceases to be a member of the Scheme as contemplated in section 24(1)(a)(ii) of the Deposit Guarantee Act, 2018 (Act [No. 16 of 2018](#)); or
 - [paragraph (aA) inserted by section 61 of Act [16 of 2018](#)]**
 - (b) if the registrar and the society are agreed that the society was registered by mistake in circumstances not amounting to fraud.
- (2) If any person has been convicted of fraud or falsitas in terms of section 4(9) by reason of the fact that he made a false statement on the strength of which the society was registered, the registrar may cancel or suspend the registration of the society on such conditions as he may deem fit.
- (3) The registrar may apply to the court for the cancellation or suspension of the registration of a society if the society -
 - (a) has been registered on the strength of any false or incorrect statement;

- (b) exists for an illegal purpose;
 - (c) has wilfully after notice from the registrar violated any provisions of this Act applicable to it;
 - (d) does not carry on the business of a building society satisfactorily; or
 - (e) misrepresents the facilities which it offers to its members or to the public.
- (4) The registrar shall, before cancelling or suspending the registration of a society under subsection (2) or applying to the court for the cancellation or suspension of the registration of a society under subsection (3), give the society not less than twenty-one days prior notice in writing of his intention to cancel or suspend the registration of the society or to make such application to the court, as the case may be, and in such notice briefly specify the grounds for the cancellation or suspension intended or the proposed application, as the case may be.
- (5) The court may on any application referred to in subsection (3) cancel the registration of the society or suspend such registration for such period as it thinks fit, and may attach to such cancellation or suspension such conditions as it thinks desirable or make such other order as it may in the circumstances think fit.
- (6) Unless the court otherwise orders, the costs of the registrar in or in connection with any such application shall be paid by the society and shall be a first charge upon the assets of the society.
- (7) The registrar shall as soon as practicable after the cancellation or suspension of the registration of any society under this section, cause notice to that effect to be published in the Official Gazette, and in one English and one Afrikaans newspaper circulating in the district in which the head office of the society is situated.
- (8) A society whose registration has been cancelled or suspended, shall as from the time of such cancellation or suspension (but in case of suspension only while the suspension lasts) be deemed to be a society not registered under this Act and shall thereupon cease to enjoy the privileges of a registered society.
- (9) The cancellation or suspension of the registration of a society shall not prejudice any right acquired by any person against the society before publication in the Official Gazette of the notice referred to in subsection (7), and any such right may be enforced as if such cancellation or suspension had not taken place.

Chapter III

ADMINISTRATION OF SOCIETIES

11. Matters to be set forth in rules

The rules of a society shall set forth -

- (a) the name of the society and the situation of its head office;
- (b) the principal objects of the society;
- (c) the manner in which the funds of the society are to be raised, the purposes to which they are to be applied and the manner in which surplus funds are to be invested;
- (d) the manner in which membership is to be acquired and terminated;
- (e) the types of shares to be issued, the conditions of redemption or repayment thereof and the preferential and other special rights attaching thereto;
- (f) the manner in which advances upon the security of the mortgage of immovable property are to be made and repaid;

- (g) whether the society intends to accept deposits and to borrow money otherwise than by way of deposit, and, if deposits are to be accepted, the conditions of acceptance and repayment;
- (h) the fees, fines and charges that may be demanded from or imposed upon shareholders, depositors and borrowers;
- (i) the manner of making an annual or more frequent audit of the accounts, and the inspection by the auditors of the mortgage bonds and other securities belonging to the society;
- (j) the manner in which profits or losses are to be ascertained and dealt with or provided for;
- (k) the manner of amending and rescinding the rules of the society and of making additional rules;
- (l) the manner of electing, appointing, discharging and fixing the remuneration of directors, and their qualifications, powers and duties, and the manner of appointing, discharging and fixing the remuneration of members of local boards or committees and officers of the society;
- (m) the manner of calling the annual general meeting and special general meetings of members, the quorum necessary for the transaction of business at such meetings, and the manner of voting thereat;
- (n) whether disputes between the society and any of its members, or between the society and any persons claiming under the rules or whose claims are derived from members, shall be settled by the court or by arbitration;
- (o) how contracts or other documents binding the society shall be executed;
- (p) how custody shall be kept of the mortgage bonds, title deeds and other securities belonging to or held by the society;
- (q) subject to the provisions of this Act, the manner in which the society shall be wound up; and
- (r) such other matters as the registrar may approve.

12. Amendment of rules

- (1) A society may in the manner directed by its rules amend or rescind any rule or make any additional rule, but no such amendment, rescission or addition shall be valid -
 - (a) if it purports to infringe any right of a creditor of the society who is not a member thereof; or
 - (b) if it is directed against any particular individual; or
 - (c) if it purports to alter the rights of members in a winding-up.
- (2) Within fourteen days from the date of passing a resolution for the amendment or rescission of any rule or the making of any additional rule, two copies of such resolution shall be transmitted by the secretary of the society to the registrar together with a certificate signed by the chairman of the board and the secretary of the society to the effect that the provisions of the rules of the society relating to the amendment or rescission of or addition to any rule have been complied with.
- (3) If the registrar is convinced that such amendment, rescission or addition complies with the provisions of this Act, and is financially sound and that it will not have the result that the methods of transacting the business of the society will be undesirable, he shall register the resolution and return one of the copies to the secretary of the society with the date of registration endorsed thereon, and any such amendment, rescission or addition shall take effect as from the date of the registration.

13. Registrar may require revision of rules

- (1) Notwithstanding anything contained in this Act, but subject to the limitations laid down in section 12(1), the registrar may at any time request any society to effect such amendments not inconsistent

with the provisions of this Act as the registrar may deem desirable to its rules in order to remove anomalies or undesirable divergencies in the rules of different societies, and the board of such society shall thereupon submit the proposed amendments to its members at or before the next annual general meeting of the society and notify the registrar of the decision thereon not more than fourteen days thereafter.

- (2) If adoption of the proposed amendments is decided upon, the provisions of subsections (2) and (3) of section 12 shall mutatis mutandis apply.

14. Model rules

- (1) The Minister may by notice in the Official Gazette prescribe model rules not inconsistent with this Act for the government of a society.
- (2) Any society which it is proposed to register under this Act may adopt as its rules all or any of the model rules so prescribed and in force at the time.
- (3) Upon registration of a society any model rules so prescribed and in force at the time shall, in so far as they are not inconsistent with or excluded or amended by the rules tendered for registration, be deemed to form part of the rules of that society in the same manner and to the same extent as if they were contained in the rules so tendered.
- (4) No amendment of or addition to or repeal of the model rules shall apply to any society registered prior to the date of the publication in the Official Gazette of the notice containing such amendment, addition or repeal unless the amendment, addition or repeal is adopted by the society in general meeting in accordance with the provisions of section 12.

15. Binding force of rules

- (1) The rules of a society shall after registration thereof be binding upon the society and its members and officers and upon all persons claiming under the rules or whose claims are derived from members.
- (2) Any officer of a society who knowingly and wilfully commits or concurs in the commission of any breach of the rules of the society shall be guilty of an offence.
- (3) A society shall make a copy of its rules available for inspection by members of the public during the normal business hours of the society.
- (4) Any member shall be entitled upon request to obtain from the society free of charge a copy of the rules of the society, and every depositor shall similarly be entitled to extracts from such of the rules as relate to deposits.

16. Election or appointment of directors

- (1) The business of a society shall be managed by a board of directors which may, subject to such conditions as the board may determine, delegate any of its powers to any officer.
- (2) A director shall be elected for a period not exceeding three years but shall be eligible for re-election, upon the termination of any period for which he has been elected.
- (3) Whenever a casual vacancy occurs on the board of a society, the remaining directors may appoint a person to fill the vacancy until the next annual general meeting, and the person elected at that meeting shall fill the vacancy for the unexpired portion of the period of office of the director whose office became vacant.
- (4) Subject to the provisions of subsection (3), vacancies on the board of a society shall be filled at the annual general meeting by election by a majority of the members voting in accordance with the rules.

- (5) A society shall within fourteen days of the appointment of a director in terms of subsection (3) or the election of a director in terms of subsection (4), send to the registrar a notice of the appointment or election signed by the director appointed or elected and by the secretary of the society.
- (6) A society shall together with the notice referred to in subsection (5) furnish the registrar with the name and address of each of its directors and the date upon which the period of office of such director is normally due to expire.
- (7) If the remaining directors fail to fill a casual vacancy in accordance with subsection (3) or the members of the society assembled in annual general meeting fail to fill any vacancy in accordance with subsection (4), the registrar may in his discretion, and upon the submission to him of a sworn statement in writing made by any seven members and the secretary of the society or by two directors and the secretary of the society, setting forth the fact that such a failure has occurred, appoint from a list of names attached to such statement a duly qualified member of the society to fill the vacancy until the next annual general meeting.
- (8) The board of directors shall cause to be kept minutes of all its meetings, and such minutes shall be confirmed and signed by the chairman at the next ensuing ordinary meeting of the board.
- (9) For the purposes of election to the board of a society, a person appointed by the remaining directors in terms of subsection (3), shall not be regarded as a retiring director.
- (10)
 - (a) Not more than one-third of the total number of directors of a society shall be executive officers of that society.
 - (b) For the purposes of paragraph (a) casual vacancies and fractions shall not be taken into account.
- (11) Notwithstanding the provisions of subsections (2) and (3) a director of a society who is an executive officer of that society shall vacate his office as such a director when he ceases to be such an officer.

17. Disqualifications of directors

- (1) Any of the following persons shall be disqualified from being elected or appointed as, or holding the office of, a director of a society, namely -
 - (a) a minor or any other person under legal disability;
 - (b) an unrehabilitated insolvent;
 - (c) any individual who has at any time been convicted, whether in the Territory or elsewhere, of robbery, theft, fraud, forgery or uttering a forged document or perjury or any other crime of which dishonesty is an element or any other crime in respect of which he had been sentenced to a term of imprisonment without the option of a fine;
 - (d) any person who has been removed from an office of trust on account of misconduct;
 - (e) any auditor of the society or any person in his employ;
 - (f) any employee or agent of the society or any person in the employ of such an agent.
- (2) For the purposes of this section "employee" shall not include any professional person, excluding an auditor referred to in subsection (1)(e), who derives fees from the society for his professional services, or any executive officer of the society.

18. Disclosure by directors of interests in contracts with society

- (1) A director of a society who is in any way, whether directly or indirectly, interested in any contract or proposed contract with the society or participates in the profits of any contract with the society, or is a director, office-bearer or officer of any company or a member of any firm entering into

any contract with the society, shall declare the nature and extend of his interest as provided in subsection (2).

[The word “extend” should be “extent” to be grammatically correct.]

- (2) The declaration required by subsection (1) shall be made at the meeting of the directors of the society at which the question of entering into the contract is first taken into consideration if the director concerned is present at such meeting, or otherwise at the next meeting of the directors following his receipt of notification in writing of such contract, or, if the director was not at the date of that meeting interested in the proposed contract, at the first meeting after he becomes so interested, and, where a director becomes interested in a contract after it is made, at the first meeting of the directors held after the director becomes so interested.
- (3) A director having an interest as set out in subsection (1), shall not be present at the discussion of any such contract or any matter arising from, or incidental to such contract, nor shall he vote in respect thereof.

19. Head office of society

[The word “office” is misspelt in the Official Gazette, as reproduced above.]

- (1) Every society shall have its head office in the Territory.
- (2) Notice in writing of the situation of its head office shall be lodged with the registrar by a society when application for the registration of the society is made, and whenever any change in the situation of the head office takes place notice in writing of such change shall be lodged with the registrar by the society within fourteen days thereafter.

20. Branch offices and agencies

- (1) The board of any society may in its discretion establish one or more branch offices or agencies of the society at such place or places as it may determine.
- (2) The board may place any such office or agency under the control of a local board and may determine the powers and duties of any such local board.
- (3) Every local board and every officer appointed to any such office or agency shall be under the control of the board of the society.

21. General powers of societies

- (1) A society shall, provided it is, save as otherwise provided by this section, so authorised by its rules, have power -
 - (a) (i) to acquire or retain the ownership of land and to erect buildings primarily required for the administration of the society's affairs, including the housing of members of its staff, thereon and to alienate any such land and to acquire other or further land for like purposes, and to let any such portion of the buildings in which the business of the society is carried on as may not be required for the purposes of the society;
 - (ii) to rent buildings primarily required for the administration of the society's affairs, including the housing of members of its staff, and to terminate or cede any such lease and to rent other or further buildings for like purposes, and to sub-let any such portion of a building so leased as may not be required for the purposes of the society;
 - (iii) to join any person in acquiring the ownership of any land and to erect buildings thereon, any portion of which is used by the society or its agent;
 - (iv) to acquire and hold shares in any company with limited liability registered under the Companies Act, 1973 (Act [61 of 1973](#)), which is the owner of land with or without buildings thereon, where any portion of any building on such land is being used, or

any portion of any building to be erected on such land is to be used, by the society or its agent, and to grant loans to any such company in which the society so acquires or holds shares:

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

Provided that, except with the written consent of the registrar, and subject to such conditions as he may prescribe, the total investment in any such land, buildings and shares and by way of such loans other than advances on the security of mortgages of immovable property by any society, shall not at the time of acquisition of such land and shares, of the erection of such buildings or of the granting of such loans exceed the percentage set out in the second column of the table below, in relation in each case to the sum of the society's indefinite share capital and general reserve as set out in the first column thereof.

TABLE

Total indefinite share capital plus general reserve	Maximum percentage of investment in land, buildings, shares and loans
Less than R20 000 000	20
R20 000 000 and more, but less than R100 000 000	15
R100 000 000 and more, but less than R200 000 000	12½
R200 000 000 and more	10

- (b) (i) to buy in immovable property mortgaged to the society, and to erect on such property that is vacant land dwelling houses, with or without the outbuildings incidental thereto; or
- (ii) to acquire leases of land ceded to the society in security for debt;
- (c) from time to time to raise funds by the issue, with due regard for the provisions of sections 27, 29 and 35, of paid-up shares or subscription shares or both paid-up shares and subscription shares of such types and denominations and with such preferential rights regarding dividends and subject to such conditions as to transfer as may be determined by the society in accordance with its rules and, subject to the provisions of this Act and the rules, to repay such shares according to the terms under which they were issued;
- (d) (i) with due regard for the provisions of section 25, to receive savings deposits, transmission deposits or fixed deposits, and to pay interest thereon;
- (ii) with due regard for the provisions of section 26, to borrow money at interest, otherwise than in the form of savings or fixed deposits, or to arrange overdraft facilities with a bank approved by the registrar;
- (iii) to accept cash as collateral security in respect of advances made in terms of section 28 and to pay interest thereon;
- (iv) to charge, in accordance with the provisions of section 38(6), a levy in respect of any advance in terms of the said section, and to receive such levy;

- (e) to hold cash and make deposits and investments as authorised by section 28;
- (f) to negotiate the purchase or sale and the hiring or letting by members or others of immovable property mortgaged or to be mortgaged to the society;
- (g) to act as the agent of insurance companies or insurance societies in effecting insurances of all kinds;
- (h) notwithstanding anything contained in the rules of the society, to make donations out of its available profits, whether past or present, to or in favour of any national, public, charitable or educational purpose, organisation or institution;
- (i) to pay pensions or gratuities to, or to adopt or to establish and maintain or to join with other building societies in adopting or establishing and maintaining pension, superannuation, benevolent or medical aid funds or schemes in respect of its employees or the employees of a company contemplated in paragraph (a)(iv), (1) or (n): Provided that the assets of any such fund or scheme shall not be merged with the assets of the society;
- (j) to grant loans to its employees;
- (k) notwithstanding anything contained in the rules of the society, to grant loans to any educational organisation or institution approved by the registrar by notice in the Official Gazette;
- (l) to acquire or establish or join with other building societies in acquiring or establishing an insurance company with limited liability registered or to be registered under the Companies Act, 1973 (Act [61 of 1973](#)), the main activities of which shall be the effecting of any one or more of or all the following kinds of insurances, namely -

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

- (i) insurance in respect of immovable property mortgaged or to be mortgaged to a society, or mortgaged or to be mortgaged to or owned by any pension, superannuation, benevolent or medical aid fund or scheme referred to in paragraph (i); or
- (ii) insurance to provide additional security for the repayment of any advance made by a society on the security of a mortgage of immovable property; or
- (iii) insurance in respect of any recognised class of risk against which a society in the conduct of its business normally insures itself; or
- (iv) insurance in respect of the life of any person who has applied to the society for the issue to him of subscription shares, up to the total amount of such shares and the dividends payable on such shares at the time when they become fully paid up; or
- (v) insurance in respect of such other matters as the registrar may approve:

Provided that -

- (a) save with the consent of the registrar, no person other than a society shall hold any share or shall be a beneficial owner of any share in any such insurance company and that a society or societies shall at all times hold shares in such an insurance company entitling such society or societies to a majority or preponderance of votes and to appoint a majority of the directors of such an insurance company;
- (b) the memorandum and articles of association of any such insurance company, in the case of such establishment thereof, and the acquisition thereof, in the case of such acquisition, or any amendment of such memorandum or articles shall be subject to the prior approval of the registrar and of the registrar of insurance; and

- (c) the provisions of this paragraph shall not be construed as prohibiting the continuance or renewal of any insurance referred to therein, if the circumstances by virtue of which it was effected have ceased to exist;
- (m) subject to such conditions as the Minister may impose, to conduct its business in any other country or territory approved by the Minister;
- (n) to acquire or establish or join with other societies or any persons or companies with limited liability registered under the Companies Act, 1973 (Act [61 of 1973](#)), in acquiring or establishing a company with limited liability registered or to be registered under that Act, the main activities of which shall be any one or more or all of the following, namely -
 - (i) the acquisition or the retention of the ownership of any land and the development, letting or sale of land owned by it;
 - (ii) the erection on any such land of buildings for residential purposes, together with buildings for business purposes in so far as such last-mentioned buildings constitute an essential part of a township in terms of any relevant approved township development project, and the letting of any such buildings;
 - (iii) the acquisition of shares in any other company with limited liability registered under the Companies Act, 1973 (Act. 61 of 1973), the main activities of which shall be any one or more of or all the activities mentioned in subparagraphs (i), (ii) and (v);

[The full stop after the word “Act” inside the brackets is superfluous. The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

- (iv) the granting of loans to any company in which it has acquired shares as contemplated in subparagraph (iii);
- (v) the erection of buildings for residential purposes on land bought in under paragraph (b) by a society holding shares in it:

Provided that -

- (a) when a society becomes the holder of any shares in any such company, the society's investment in such shares shall not exceed one-fifth of the amount by which the sum of its indefinite share capital and general reserve exceeds the amount required to be maintained in terms of section 29(1), or four million rand, whichever is the lesser amount;
- (b) a society or societies shall at all times hold shares in any such company entitling the society or societies to a majority or preponderance of votes and to appoint a majority of the directors of any such company;
- (c) the activities of any such company so registered or to be so registered, shall be subject to such directions and conditions as to their scope and nature, the manner of their performance and any particular project undertaken by such company as may be given and imposed by the Minister from time to time; and
- (d) the memorandum and articles of association of any such company, in the case of such establishment thereof, and the acquisition thereof, in the case of such acquisition, or any amendment of such memorandum or articles shall be subject to the prior approval of the registrar, and that such memorandum or articles shall be subject to any amendment the registrar may determine;
- (o) to grant loans to any company acquired or established under paragraph (n), of which it is a shareholder;
- (p) to acquire, hold or dispose of the shares of a company with limited liability registered under the Companies Act, 1973 (Act [61 of 1973](#)), the main activities of which are the acquisition and the retention of the ownership of immovable property and to which an advance on the

security of the mortgage of immovable property which is or is to be used for the purposes of any building of which not less than fifty per cent of the total floor area is used for residential purposes or purposes incidental thereto, has been or is to be granted by the society: Provided that the society shall not acquire or hold shares representing more than twenty-five per cent of any such company's paid-up share capital and that the society shall not invest more than fifty thousand rand in the shares of any such company;

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (q) to undertake such other business as may be approved by the Minister by notice in the Official Gazette.
- (2) A society shall undertake no business other than that authorised by this section, and in particular shall not enter into any contract (other than a contract for the allotment of shares in terms of paragraph (c) of subsection (1) or for the receipt of money on deposit or loan in terms of paragraph (d) of that subsection) whereby the society agrees, in return for one or more sums of money paid to the society, to pay a sum of money at a future date or a series of sums of money at future dates.

22. Societies to keep records

A society shall keep such records in the English or the Afrikaans language as are necessary to exhibit clearly and correctly the state of the society's affairs and to explain its transactions and financial position and to enable the registrar to determine whether the society has complied with the provisions of this Act, and shall preserve such records in a safe place for a period of at least three years as from the date of the last entry therein.

[The word "society" is misspelt in its first use in section 22, as reproduced above.]

23. General meetings

- (1) A general meeting of the members of every society shall be held within four months after the close of every financial year of the society in order that its financial position, the account and balance sheet referred to in section 33, the auditor's report and the report of the board may be considered and dealt with, directors may be elected and general business may be transacted.
- (2) The meeting referred to in subsection (1) shall be called the annual general meeting and shall be held at the head office of the society or at such other convenient place and at such time as may be determined by the board.
- (3) A special general meeting shall be convened by the board upon receipt of a requisition signed by three or more directors or by one hundred members or, if the membership is less than one thousand, by at least ten per cent of the whole body of members or by such smaller number or proportion of members as the rules of the society may prescribe.
- (4) If the board fails to convene a special general meeting of the society within fourteen days after receipt of such a requisition the signatories of such requisition, or a majority of them, may convene such a meeting.
- (5) Notice of annual and special general meetings of a society shall be given to all members and to the registrar and the auditors of the society in the form and manner prescribed by the rules, and such notice shall specify the day, hour and place and the objects of the meeting, and shall, if any amendment or rescission of or addition to the rules is intended to be proposed, contain a copy of every such amendment, rescission or addition: Provided that in the case of the intended adoption of a new set of rules it shall be sufficient compliance with the foregoing provisions of this subsection and with any provision in the rules of a society if the notice of the meeting contains a statement to the effect that copies of the proposed new rules are available for inspection at every branch office and agency of the society and are obtainable by members on request.
- (6) At least twenty-one days' notice shall be given of any annual or special general meeting.

- (7) Every registered society shall cause minutes of all proceedings of annual or special general meetings to be entered in one or more books kept for that purpose in the English or Afrikaans language.
- (8) The secretary of the society shall, within fourteen days after any annual or special general meeting, transmit to the registrar a copy of the minutes of the proceedings of that meeting, certified by himself and two directors, whether the minutes have or have not been confirmed, and if at any time any alteration of any such minutes is approved, he shall within fourteen days after the date on which the alteration was approved, transmit to the registrar a copy of the minutes so altered, certified as aforesaid.

24. Change of name of society

- (1) A society may by special resolution change its name.
- (2) Whenever the name of a society is changed in terms of subsection (1), the registrar shall enter the new name in his records in the place of the former name and shall issue a new certificate of registration of the society under its new name, provided the previous certificate issued by him is delivered to him for cancellation.
- (3) The change of name shall not affect any right or obligation of the society or any member thereof or any other person concerned or render defective any legal proceedings by or against the society, and any legal proceedings that may or could have been continued or commenced by or against it under its former name may be continued or commenced under its new name.
- (4) The officer in charge of a deeds registry or other office in which is registered any mortgage bond or any immovable property belonging to the society shall, upon production to him by the society of such bond or of the title deed of such immovable property and a certificate by the registrar of the registration of the society under its new name, and upon payment of the fees that may be payable in terms of any law relating to deeds registries, make such endorsements upon such bond or title deed and such entries in his registers as may be necessary by reason of the change of name.
- (5) If the registrar has certified in writing that in his opinion the new name of the society is so similar to its former name that both names obviously refer to the same society, any mortgage bond or title deed registered in the former name of the society shall, unless and until it is sought to endorse such bond or title deed regarding any transaction other than a cancellation, be deemed to have been registered in the name of the society as changed.
- (6) The provisions of section 6 shall apply mutatis mutandis in respect of a change of the name of a society.

Chapter IV FINANCIAL REQUIREMENTS

25. Deposits

- (1) A society shall not accept deposits of money subject to withdrawal by cheque, draft or order payable on demand but may accept deposits in an account from which amounts may be paid out or transferred at the request of the depositor.
- (2) A society shall not accept savings deposits from any company with limited liability other than an association incorporated in terms of section 21 of the Companies Act, 1973 ([Act 61 of 1973](#)), unless -

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

 - (a) the deposits are accepted subject to the conditions that only one withdrawal may be made per month and that each deposit or withdrawal shall amount to not less than one hundred rand; or

- (b) the moneys so invested with the society represent deposits referred to in paragraphs (a) and (b) of the proviso to section 25(2) of the Rents Ordinance, 1977 (Ordinance 13 of 1977).
- (3) A society shall not allow any one person to maintain with it a credit balance on savings account in excess of -
 - (a) ten thousand rand if the society's total assets as at the close of the last preceding financial year did not exceed five hundred thousand rand; or
 - (b) one hundred thousand rand if the said assets at the close of such financial year exceeded five hundred thousand rand:

Provided that the provisions of this subsection shall not preclude a society from crediting interest to a savings account.

- (4) Save with the written consent of the registrar, which may be given either generally or in any particular case, and subject to such conditions as he may prescribe, no society with total assets as set out in any item of the first column in the table below, shall accept from any one person deposits -
 - (a) which fall due for repayment in any one month in an amount which, exclusive of interest, exceeds the amount set out against that item in the second column of the said table;
 - (b) which in the aggregate, exclusive of interest, exceeds the amount set out against that item in the third column of the said table.

TABLE

Total assets at close of last preceding financial year	Maximum amount of deposits repayable in any one month which may be accepted	Maximum aggregate amount of deposits which may be accepted
Up to R100 000 000	R 250 000	R 6 000 000
More than R100 000 000but not more thanR250 000 000	R 500 000	R12 000 000
More than R250 000 000but not more thanR800 000 000	R1 000 000	R24 000 000
More than R800 000 000	R2 500 000	R60 000 000

- (5) Where funds are deposited for account of bona fide trusts, separate accounts may be opened by the same trustee for different trusts, subject in each individual case to the limits prescribed by this section.
- (6) A society shall repay a fixed deposit on due date and not earlier, but shall not be required to repay it on due date where the depositor concerned has previously instructed it in writing as to the manner in which the deposit or any portion thereof is to be reinvested with the society: Provided that a fixed deposit which is being reinvested may be reinvested for a shorter period than twelve months but may be reinvested for such shorter period once only.

- (7) Notwithstanding the provisions of subsection (6), a society may in its discretion repay a fixed deposit before due date -
- (a) where the deposit forms part of the assets in an insolvent or a deceased estate;
 - (b) where the depositor has been placed under curatorship;
 - (c) where the depositor has been placed under judicial management or in liquidation;
 - (d) where the deposit is required by a pension fund to effect deferred pension payments;
 - (e) in the case of a fixed deposit ceded to the society as collateral security;
 - (f) in any case after the expiration of a period of twelve months from the date on which the deposit was made with it or was last reinvested with it if the depositor has given it at least thirty days' notice of withdrawal; or
 - (g) in such other cases as the registrar may approve either generally or in any particular case.
- (8) A society shall not grant a loan against the security of a fixed deposit which it holds to the credit of the borrower at a rate of interest which is not at least one per cent on the amount of such loan higher than the rate of interest payable in respect of such deposit.
- (9) A society shall not hold out to members of the public that it will at all times consent to the repayment of savings deposits or any portion thereof at shorter notice, in relation to the amount to be withdrawn, than is determined by the rules of that society.

26. Loans and overdrafts

- (1) A society shall not borrow money from any person other than a banker approved by the registrar or otherwise than in accordance with such terms as may be approved in writing by the registrar, but the provisions of this subsection shall not be construed as prohibiting the receipt of deposits in accordance with the rules of the society.
- (2) A loan or an overdraft granted to a society by an approved bank shall not be invalidated by reason only of any contravention of this Act by the society.
- (3) A society shall not pledge any assets as security for loans or overdrafts unless its unencumbered assets apart from assets which have been so pledged amount to not less than the sum of -
- (a) all its liabilities excluding indefinite shares and reserves; and
 - (b) the amount of the indefinite share capital and general reserve it is required to maintain in terms of section 29(1).

27. Shares

- (1) A society shall not issue any shares other than -
- (a) Shares for an indefinite period, which shall be paid-up shares and of which the shareholder shall not be intitled at any time to demand redemption, and which the society shall, subject to the provisions of this section, be entitled to redeem after six months' notice to the shareholder;

[The word "entitled" is misspelt in the Official Gazette, as reproduced above.]
 - (b) fixed period shares, which shall be -
 - (i) paid-up shares issued for periods of not less than five years;

- (ii) subscription shares calculated to mature after the expiry of a period of not less than three years,

and of which the shareholder shall not be entitled to demand redemption and which the society shall not be entitled to redeem before the period of issue has expired or the share has matured.
- (2) A society shall not issue a subscription share to any limited liability company other than an association incorporated under section 21 of the Companies Act, 1973 (Act [61 of 1973](#)).

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]
- (3) A society may, at any time before the expiry of the period after which a subscription share is calculated to mature, at the request of the shareholder, extend such period for a further period of not less than twelve months after the expiry of the period after which such share was originally calculated to mature, in which case such share shall mature after the expiry of such period of extension, and the society may thereafter from time to time similarly extend the total period after the expiry of which such share is calculated to mature, in which case such share shall mature after the expiry of any further period of such extension.
- (4) A society shall not issue a subscription share in respect of which the periodical contributions are required to be made otherwise than in equal monthly instalments, except in cases where dividends on shares in or interest on deposits with a building society are used as such contributions, in which cases the contributions may be made in equal three-monthly or six-monthly instalments.
- (5) A society shall not transfer a subscription share from one person to another person except in the following cases:
 - (a) from parent to child or from grandparent to grandchild and conversely;
 - (b) from a deceased estate to a beneficiary;
 - (c) any other case approved by the registrar;
- (6) Where the period of any subscription share has been extended in terms of subsection (3) or any subscription share has been transferred in terms of subsection (5), the periodical contributions shall be continued.
- (7) A society shall not purport to undertake to give more than six months' notice of its intention to redeem any indefinite share, and any undertaking so given shall not bind the society.
- (8) A society shall not give notice of its intention to redeem any indefinite share before the expiration of a period of one year from the date of issue of that share.
- (9) Whenever the period of issue of a fixed period share expires the society shall redeem that share.
- (10)
 - (a) Whenever the period after which a subscription share is calculated to mature, or such period as extended in terms of the provisions of subsection (3) expires, the society shall redeem that share unless the shareholder requests that it be not redeemed.
 - (b) Where by virtue of a request referred to in paragraph (a) a subscription share is not redeemed -
 - (i) the society may pay out monthly dividends on that share;
 - (ii) the shareholder may upon giving three months' notice to the society obtain redemption of that share;
 - (iii) the society may upon giving six months' notice to the shareholder redeem that share.
- (11) Notwithstanding anything contained in this section, but subject to the provisions of section 35(5), the registered owner of any share in a society may upon giving three months' notice obtain redemption of that share if the society agrees then to redeem it: Provided that such share shall not be redeemed before the expiration of a period of eighteen months from the date of acquisition

of that share by that shareholder: Provided further that the period of eighteen months and the requirement in regard to notice shall not apply -

- (a) where the share forms part of the assets in an insolvent or a deceased estate;
 - (b) where the shareholder has in terms of section 35(4) been notified of the intended reduction of the dividend rate and he applies for redemption during the period stated in the notice mentioned in the said section;
 - (c) where the shareholder has been placed under curatorship;
 - (d) where the shareholder has been placed under judicial management or in liquidation;
 - (e) in the case of a share ceded to the society as collateral security; or
 - (f) in such other cases as the registrar may approve either generally or in any particular case.
- (12) Notwithstanding the provisions of subsection (1)(b) the board of a society may in its discretion, and in the manner and under the circumstances set out in the rules of the society, repay before the date of maturity the aggregate amount of the periodical contributions made in respect of a subscription share and any accrued dividends.
- (13) A society shall not issue any share with a right to a cumulative dividend except where such right is limited to the seven years immediately succeeding the first registration of the society and any claim to such accumulated dividends is limited to the available profits of the said seven years.
- (14) A society shall not issue any paid-up share at a price other than its nominal or face value nor shall it redeem any such share at an amount which differs from the nominal or face value of such share.
- (15) A society shall not issue any share conferring a preferential claim to the assets of the society in the case of the winding-up of the society.
- (16) A society shall not issue any share which confers upon the holder thereof any voting rights more favourable than those conferred by any of the other shares issued by the society.
- (17) A society shall not against the security of any share issued by it grant any loan at a rate of interest which is not at least one per cent on the amount of such loan higher than the rate of dividend payable on such share.

28. Investment of funds

Such portion of the funds of a society as is not held in the form of assets ranking as liquid assets or used for any purpose mentioned in section 21(1)(j) or (k), shall, subject to the provisions of this Act, be invested in one or more of the following forms of security and in no other manner, that is to say -

- (a) subject to the provisions of sections 36 to 44, inclusive, in advances or re-advances to members and others on the security of a reducible or fixed term mortgage of urban immovable property;
- (b) in loans to depositors on the security of their deposits with the society and to members on the security of their shares in the society;
- (c) in shares of any insurance company referred to in section 21(1)(1);
- (d) in shares of and loans to any company referred to in section 21(1)(a)(iv) or 21(1)(n);
- (e) in shares of a company referred to in section 21(1)(p);
- (f) in any other security approved by the registrar by notice in the Official Gazette.

29. Minimum indefinite share capital and general reserve to be maintained

- (1) A society shall maintain an indefinite share capital and unimpaired general reserve together amounting to not less than twenty per cent of the aggregate amount of its fixed period share capital

and of the amounts owing on deposits, loans overdrafts, interest accrued and dividends, as shows in the last preceding monthly return furnished to the registrar by it in terms of section 32(1).

- (2) For the purposes of subsection (1) the amount of the share capital shall be deemed to be reduced by the aggregate amount owing to the society on loans made against the security of shares in the society.

30. Minimum liquid assets to be maintained

- (1) A society shall maintain in the Territory in respect of its liabilities to the public (excluding shares for an indefinite period issued by it), liquid assets amounting to not less than the aggregate of -
 - (a) twenty per cent of its liabilities in respect of transmission deposits;
 - (b) fifteen per cent of its short-term liabilities other than transmission deposits;
 - (c) ten per cent of its medium-term liabilities; and
 - (d) five per cent of its long-term liabilities,

as shown in the last preceding monthly return furnished to the registrar by it in terms of section 32(1): Provided that in respect of its liabilities in the form of fixed deposits and subscription shares, a society may, instead of an amount calculated in accordance with the foregoing provisions of this subsection, maintain liquid assets equal to seven and one-half per cent of the aggregate amount of all such deposits and shares.

- (2) The liabilities of a society as calculated for the purposes of subsection (1), shall be deemed to have been reduced by the aggregate amount owing to the society on loans made against the security of deposits with or shares in the society: Provided that the liabilities of a society calculated for the purposes of subsection (1) shall not include the amount of advances made to the society by the State.
- (3) A society shall not pledge or otherwise encumber any liquid assets held for the purposes of this section.
- (4) For the purposes of this section a security shall be valued at its market value as certified by the Secretary for Finance.

31. Period for maintaining prescribed minima

A society shall maintain any minimum amount prescribed by section 29 or 30 at all times during the period from the date of certification in terms of section 32(1) of the monthly return by reference to which that amount is determined, until the day preceding the date on which the next succeeding monthly return is so certified.

32. Monthly returns

- (1) Every society shall not later than the twenty-first day of every calendar month transmit to the registrar a statement, in the prescribed form and signed by a director and the chief executive officer and chief accountant, showing as at the close of business at the end of the preceding calendar month -
 - (a) the indefinite share capital;
 - (b) the fixed period share capital;
 - (c) the amounts owing on deposits, loans, overdrafts, interest accrued and dividends;
 - (d) the amount of its unimpaired general reserve;
 - (e) the investment in office premises;
 - (f) the advances against mortgage bonds;

- (g) the liquid assets;
 - (h) the aggregate net amount it has committed itself to pay out in respect of advances granted, and such supplementary information as the Minister may prescribe.
- (2) Any society which contravenes the provisions of this section shall be guilty of an offence.

33. Annual accounts

- (1) The financial year of every society shall end on the thirty-first day of March.
- (2) After the end of each financial year the board of a society shall prepare in the prescribed form an account of all the revenue and expenditure of the society in respect of that financial year and a balance sheet as at the end of such financial year.
- (3) Such balance sheet shall not include as an asset any amount representing expenses of organisation or extension or the purchase of business or goodwill.
- (4) In every such balance sheet shall be specified inter alia -
 - (a) the amounts to the credit of the holders of the various types of shares, respectively;
 - (b) the amount owing in respect of each type of deposit, separately;
 - (c) the amount owing by the society for loans and overdrafts;
 - (d) the number and the aggregate amount of all advances made pursuant to the provisions of section 28(a) to be classified separately as follows, according to the amount owing to the society, namely -
 - (i) not exceeding twenty thousand rand;
 - (ii) exceeding twenty thousand rand but not exceeding forty thousand rand;
 - (iii) exceeding forty thousand rand but not exceeding sixty thousand rand;
 - (iv) exceeding sixty thousand rand;
 - (e) particulars of the amount invested in government and other securities, giving for each class the value at which such securities are held in the books of the society, and the total value of securities of all classes at the date of the balance sheet, every security then held being taken at the market value at that date, as certified by the Secretary for Finance.
- (5) Every such balance sheet shall indicate by way of a note -
 - (a) the aggregate amount of the remuneration paid to directors and to members of local boards and committees;
 - (b) the aggregate net amount the society is committed to pay out in respect of advances granted;
 - (c) where practicable, the aggregate amount or estimated amount, if it is material, of contracts for capital expenditure so far as not provided for;
 - (d) the general nature of any contingent liabilities not provided for and, where practicable, the aggregate amount of those liabilities, if it is material;
 - (e) the fact that any asset of the society is pledged or encumbered, otherwise than by operation of law, as security for any liability of the society, if such be the case, and if so, details of that asset and of that liability.

[The word “society” is misspelt in its second use in paragraph (e), as reproduced above.]

- (6) (a) To every such balance sheet shall be annexed a statement disclosing the aggregate amount owing to the society by officers of the society or by any firm in which they or any of them

have any direct interest, in respect of every advance in excess of twenty thousand rand in the case of a society whose assets at the date of the balance sheet do not exceed twenty million rand or in excess of forty thousand rand in the case of a society whose assets at the date of the balance sheet exceed twenty million rand.

- (b) Every such statement shall be certified as true and correct by two directors and the secretary of the society.
- (c) For the purposes of this subsection “direct interest” includes shares in a company or corporate body held through a nominee, but does not include a shareholding or participation in a company (other than a private company as defined in section 20(1) of the Companies Act, 1973 (Act [61 of 1973](#))), or a corporate body where the interest of the officer concerned does not exceed five per cent of the issued share capital or where such interest was acquired not less than one year after the date upon which the advance was granted.

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (7) Every person referred to in subsection (6)(a) shall give notice in writing to the society of all such matters relating to his interest in any company or corporate body as may be necessary for the purposes of the said subsection, and any person who fails to comply with the provisions of this subsection shall be guilty of an offence.
- (8) The account and balance sheet referred to in subsection (2) shall be signed on behalf of the board by two directors and the secretary of the society, and the auditors of the society shall make a report to the members on such account and balance sheet.
- (9) A copy of every such account, balance sheet and statement annexed thereto in terms of subsection 6(a) accompanied by a copy of the auditors’ report shall be sent to the registrar within fourteen days after the annual general meeting at which they are presented or within four months after the expiration of the financial year, whichever period first expires.
- (10) With every such account and balance sheet there shall be sent to the registrar, within a period laid down in subsection (9), all such subsidiary statements relating to matters dealt with in the account and balance sheet as may be prescribed, and every such subsidiary statement shall be certified as true and correct by two directors and the secretary of the society.
- (11) If any copy of a balance sheet is issued, circulated or published by a society without having annexed thereto a copy of the statement referred to in subsection (6) and a copy of the auditors’ report referred to in subsection (8), the society shall be guilty of an offence.
- (12) The registrar may call for any explanations and for such additional information as he may deem necessary with regard to the account, balance sheet, the statement annexed thereto, in terms of subsection 6(a), and the subsidiary statements sent to him, and such explanations and information shall be furnished by the society in such form as the registrar may direct and shall, if he so directs, be certified as true and correct by two directors and the secretary of the society as well as by the auditors.

34. General reserve

- (1) Every society shall establish and maintain a general reserve and shall pay into such reserve -
 - (a) the amount which at the commencement of this Act stands to the credit of its general reserve maintained by it in terms of the Building Societies Act, 1965 (Act [24 of 1965](#));
 - (b) such amounts out of its profits as it may from time to time deem fit.
- (2) Every society shall annually review the adequacy of its general reserve and, if deemed necessary, pay further amounts into such reserve out of its profits.
- (3) The provisions of subsections (1) and (2) shall not be construed as prohibiting a society from drawing upon such reserve.

35. Dividends

- (1) A society shall not pay any dividend or bonus on the shares issued by it otherwise than out of the available profits of the society.
- (2) No society shall in any one financial year pay on any share a dividend, inclusive of any bonus, the rate of which exceeds by more than two and one-half per cent the rate of dividend and bonus payable in that year in respect of indefinite shares issued by it.
- (3) Where shares have been issued on condition that for the seven years immediately succeeding the first registration of the society concerned its members shall be entitled to a cumulative dividend, and the profits available during the said period of seven years are insufficient to extinguish such cumulative dividend, the holders of such shares shall have no claim in respect of any shortfall in the amount so payable.
- (4) Where a society has, in terms of its rules, at the time of issue of any indefinite or fixed period share fixed the rate of dividend payable in respect of that share, the society shall, notwithstanding the terms on which the shares has been issued, have the right from time to time to reduce the fixed rate of dividend so payable after giving the shareholder not less than one month's written notice of the intended reduction.
- (5) Where a society issued a fixed period share with the specific undertaking that the rate of dividend will during the full currency of the share remain unchanged, the provisions of subsections (2) and (4) shall not apply: Provided that -
 - (a) such a share shall not be redeemed by the society before the expiry of its currency except in the circumstances set forth in paragraph (a), (c), (d), (e) or (f) of the second proviso to section 27(11); and
 - (b) a society shall not grant a loan against the security of such a share.

Chapter V ADVANCES

36. Reducible mortgage

- (1) A reducible mortgage of immovable property shall provide for the repayment of the capital amount advanced within a period of not more than thirty years: Provided that if any portion of the capital amount advanced has been repaid to and re-advanced by the society, the period within which the balance of such capital amount and the amount so re-advanced shall be repaid, shall be reckoned from the date of the re-advance: Provided further that where a society increases the rate of interest on an advance, this subsection shall not be so construed that it requires the society to increase the regular payments of such advance.
- (2) A reducible mortgage of immovable property may, subject to the provisions of section 37(1), section 38(4) and section 39, at any time be converted into a fixed term mortgage of immovable property, but unless a valuation is then effected in the manner provided by section 45, no such conversion shall have the effect that the date of repayment of the capital amount advanced may be extended beyond the date on which it would have been repayable if no conversion had taken place.

37. Fixed term mortgage

- (1) A fixed term mortgage of immovable property shall provide for the repayment of the capital amount advanced within a period of not more than five years: Provided that the period within which the capital amount is to be repaid may from time to time in the discretion of the society be extended for further periods of not more than five years: Provided further that the provisions of sections 38(4), 39(1) and 45(1) and (2) shall mutatis mutandis apply in respect of every such extension.

- (2) A fixed term mortgage of immovable property may, subject to the provisions of sections 36(1) and 38(2), at any time be converted into a reducible mortgage of immovable property, provided a valuation in terms of section 45 is effected of such property at the time of such conversion, and any such reducible mortgage shall in all respects be regarded as if a mortgage in respect of the advance in question had for the first time been granted on the date of such conversion.

38. Limitation of amount of advance

- (1) (a) Subject to the provisions of paragraphs (b) and (c), a society with total assets as set out in any item of the first column of the table below, shall not against the security of a mortgage of immovable property make an advance which exceeds the amount set out opposite that item in the second column of the said table:

TABLE

Total assets at the close of the last preceding financial year	Maximum advance
More than R2 000 000 but not more than R5 000 000	R 500 000
More than R5 000 000 but not more than R20 000 000	R1 000 000
More than R20 000 000 but not more than R200 000 000	R3 000 000
More than R200 000 000	R5 000 000

- (b) A society whose first financial year has not yet expired, shall not against the security of a mortgage of immovable property make an advance which exceeds an amount, not exceeding one hundred and fifty thousand rand, fixed by the registrar in respect of such society;
- (c) A society whose total assets at the close of its last preceding financial year did not exceed two million rand, shall not against the security of a mortgage of immovable property make an advance which exceeds an amount, not exceeding one hundred and fifty thousand rand, fixed by the registrar in respect of such society;
- (d) **[subsection (1) amended by Act 15 of 1987 and by Act 8 of 1992 (changes of punctuation by Act 8 of 1992 not indicated by amendment markings).]**
- (2) Subject to the provisions of subsection (6) a society shall not on the security of a reducible mortgage of immovable property advance more than eighty per cent of the value reasonably determined of the property hypothecated or the registered lease ceded: Provided that -
- (a) if collateral security is furnished it may advance an amount -
- (i) not exceeding the value so determined of the said property or lease; and
 - (ii) not exceeding the sum of -
 - (aa) eighty per cent of the value so determined of the said property or lease; plus
 - (bb) the value of the collateral security calculated as provided in section 44(2);

- (b) if a dwelling house has been or is to be erected on the property in question, it may also advance an amount equal to not more than eighty per cent of the sum -
 - (i) of the costs of the transfer of the said property or lease; and
 - (ii) of the costs of the registration of the mortgage and of all stamp duties.
- (3) In the case of property which was mortgaged to the society and which has been purchased by it owing to the debtor's default in terms of a mortgage bond or which has been sold in execution or upon insolvency or under authority of the debtor granted subsequent to his default under a mortgage bond, a society may, notwithstanding the provisions of subsection (2), advance to a purchaser on the security of a reducible mortgage, an amount not exceeding the amount due to the society by the previous owner at the time of purchase or sale, as the case may be, and previously secured by the mortgage of the said property, plus the aggregate amount of costs and preferent charges incurred by the society in respect of -
 - (a) legal proceedings instituted against such owner by it and other legal steps taken by it, for the recovery of any moneys due under the mortgage bond resulting from the default on the part of such owner;
 - (b) obtaining transfer of the property into its name; and
 - (c) essential repairs or the installation of sewerage, power or water or other essential services which it may be legally required to provide at the instance of a local authority or similar body.
- (4) Subject to the provisions of subsection 6, a society shall not, on the security of a fixed term mortgage of immovable property advance more than sixty-six and two-thirds per cent of the value reasonably determined of the property hypothecated or the registered lease ceded and of the costs of transfer of the said property in so far as such costs do not exceed four per cent of the purchase price of such property: Provided that if collateral security is furnished, it may advance an amount -
 - (a) not exceeding the value so determined of the said property or lease; and
 - (b) not exceeding the sum of -
 - (i) sixty-six and two-thirds per cent of the value so determined of the said property or lease and the said transfer costs; plus
 - (ii) the value of the collateral security calculated as provided in section 44(2).
- (5) For the purposes of subsection (2) or (4) any amounts disbursed by the society in respect of -
 - (a) premiums on insurance policies designed to provide additional security for the repayment of an advance secured by the mortgage of the immovable property; or
 - (b) taxes and licences in respect of the said immovable property; or
 - (c) the maintenance and repair of the said immovable property; or
 - (d) the installation of sewerage on the said immovable property; or
 - (e) the provision of power, water and other essential services on the said immovable property; or
 - (f) the cost incurred in converting the said immovable property from leasehold to freehold; or
 - (g) legal costs incurred by the society in respect of legal proceedings instituted by it against a borrower for the recovery of any moneys due in terms of the mortgage bond resulting from default on the part of such borrower,

shall not be reckoned as part of the amount advanced, irrespective of whether the amounts referred to in paragraphs (a) to (f), inclusive, were disbursed on behalf of the present borrower or any previous borrower.

- (6) (a) Notwithstanding the provisions of subsections (2) and (4) a society may make an advance exceeding the advance which it may make in terms of either of the said subsections if the circumstances contemplated in the provisos to the said subsections are not present, but not exceeding ninety per cent of the value reasonably determined of the property hypothecated or the registered lease ceded, provided -
- (i) a dwelling house has been or is to be erected on the property in question and the value of such property or lease does not exceed seventy thousand rand; and
 - (ii) the person to whom such advance is to be made has paid to the society in cash a levy calculated on such basis as the society may with the approval of the registrar have determined.
- (b) Any fees received by a society by virtue of the provisions of paragraph (a)(ii), together with such other sums as the society may at any time deem appropriate, shall be credited by it to a reserve which shall be maintained by it in such manner as the registrar may approve.
- (c) If the proceeds of the realisation of any property or lease by virtue of any mortgage or cession in favour of a society in respect of an advance contemplated in paragraph (a), is not sufficient to redeem such advance, such society may debit to the reserve referred to in paragraph (b) the amount of the deficit in so far as it does not exceed the difference between the amount of the advance made and the maximum amount of the advance which, but for the provisions of this subsection, the society might have made in the circumstances.
- (7) Any society which fails to maintain a reserve in terms of subsection (6)(b) shall be guilty of an offence.

39. Restriction on fixed term mortgages

- (1) The aggregate amount of advances granted by a society on the security of fixed term mortgages of immovable property shall at no time exceed ten per cent of the total assets of the society as at the close of its last preceding financial year.
- (2) No society shall advance money on the security of a fixed term mortgage of immovable property until after the expiry of twelve months from the date of registration of the society.

40. Powers of Minister in respect of interest rates on certain mortgages

- (1) The Minister may by notice in the Official Gazette, prescribe that the interest rates charged by a society in respect of existing and future advances of the nature and amount specified in the notice, excluding -
- (a) any advance against the security of a mortgage of immovable property on which a dwelling house has been or is to be erected and where the outstanding amount of the loan does not exceed twenty thousand rand; and
 - (b) any advance to an officer of the society against the security of a mortgage of immovable property on which a dwelling house has been or is to be erected,
- shall, as from a date or dates specified in the notice, exceed the basic lending rate of the society by at least the differences specified in the said notice.
- (2) For the purposes of this section “basic lending rate” means the interest rate charged by a society in respect of the greater portion, by value, of its advances against the security of mortgage of immovable property on which a dwelling house has been or is to be erected and where the loan or any outstanding amount of a loan does not exceed twenty thousand rand.
- (3) In the case of advances against the security of a mortgage of immovable property on which a dwelling house has been erected and where the outstanding amount of the loan in question exceeds twenty thousand rand or any amount specified by the Minister in a notice referred to in subsection (1), interest on the full balance of the loan shall be paid at the increased rate applicable to such an

outstanding amount in terms of such a notice, until the outstanding amount has been reduced to below the aforementioned limit, whereupon interest shall be paid at the rate which in terms of such a notice is applicable to such a lower outstanding amount.

- (4) The Minister may from time to time by notice in the Official Gazette amend or withdraw any notice issued by it under subsection (1).
- (5) Any society which fails to comply with any provision of a notice issued by the Minister under subsection (1) shall be guilty of an offence.

41. Restriction on advances on vacant land

Save with the written consent of the registrar and subject to such conditions as he may prescribe, the aggregate amount owing to a society in respect of advances against security of mortgages of vacant land shall not at any time exceed five per cent of the sum of its indefinite share capital and general reserve as at the close of its preceding financial year.

42. Limitation of total amount of certain advances

- (1) The Minister may by notice in the Official Gazette prescribe which percentage of the total amount of advances or re-advances against the security of the mortgage of immovable property granted by a society may be advances or re-advances against the security of the mortgage of immovable property -

- (a) on which a dwelling house has been or is to be erected and where the outstanding amount exceeds an amount specified in the notice;
- (b) on which flats have been or are to be erected; and
- (c) which is or is to be used for business purposes:

Provided that the percentage of the total amount of advances or re-advances granted by a society against the security of immovable property contemplated in paragraph (c) shall not exceed five per cent.

- (2) For the purposes of this section -
 - (a) “flats” means buildings, other than dwelling houses, used for residential purposes and includes grouped dwelling units of whatever kind, erected on any one hypothecated piece of land;
 - (b) the use of immovable property for the purposes of any building more than fifty per cent of the total floor area of which is used for residential purposes or purposes incidental thereto shall not be deemed to constitute use of such immovable property for business purposes; and
 - (c) the use of any building for the purposes of an hotel or a boarding house or similar business shall not be deemed to constitute use for residential purposes.
- (3) The Minister may from time to time by notice in the Official Gazette amend or withdraw a notice issued by it under subsection (1).
- (4) Any society which fails to comply with any provision of a notice issued by the Minister under subsection (1) shall be guilty of an offence.

43. Prohibition of certain types of advances

A society shall not -

- (a) advance money on the security of the mortgage of immovable property unless the bond securing the debt is a first mortgage, but the provisions of this paragraph shall not debar a society from holding a second or subsequent mortgage if such property is already bonded to it by way of a first mortgage.

- (b) at any time allow a mortgage over immovable property bonded to it to rank *pari passu* with a mortgage bond held by any other person over the property so bonded;
- (c) advance money on the security of a notarial general bond;
- (d) advance money against the security of a mortgage of immovable property used for industrial purposes.

44. Collateral security

- (1) Save in the case of an advance to an officer of the society or an advance the amount of which does not exceed twenty thousand rand, and where a dwelling house has been or is to be erected on the hypothecated property in question, a society shall, notwithstanding the provisions of section 38, accept as collateral security for the purposes of section 38(2) or (4) security in any of the forms specified in paragraph (d), (e) or (f) of subsection (2) only if additional security in any of the forms specified in paragraph (a), (b) or (c) of subsection (2), is furnished to an amount equal to at least one half of the difference between the amount advanced and the amount which the society may advance in terms of section 38(2) or (4) if no collateral security is furnished: Provided that the registrar, after consultation with the Treasury, may approve that, for such period as he may determine, the said additional security shall not be required in respect of guarantees furnished by the Minister in respect of persons referred to in section 1(1) of the Finance Act, 1981 ([Act 2 of 1981](#)): Provided further that in the case of a guarantee by a company of the business of which the provision of dwelling houses forms a substantial part, and where the value of the property in question does not exceed seventy thousand rand, the additional security may, to the extent and on the conditions approved by the registrar, be in the form of a guarantee policy of a registered insurer or a guarantee by a financial institution approved by the registrar in general or in a specific case.

[The Finance Act 2 of 1981 applied only to persons who were members of the Statutory Institutions Pensions Act 3 of 1980, which was repealed by the Pension Matters of Government Institutions Proclamation, AG 56 of 1989.]

- (2) In calculating for the purposes of section 38(2) or (4) the value of any collateral security furnished, that value shall, if the collateral security -
 - (a) consists of cash deposited with the society be taken at the full amount so deposited;
 - (b) consists of deposits with a society or fixed deposits with a bank, be taken at the full amount of the deposits;
 - (c) consists of shares in a society, be taken at the amount paid up on the shares;
 - (d) consists of a life insurance policy, be taken at the surrender value of the policy;
 - (e) consists of a bank guarantee, an insurer's guarantee policy or any other form of guarantee or suretyship acceptable to the society, be taken at the full amount guaranteed;
 - (f) is in any form not mentioned in paragraph (a), (b), (c), (d) or (e) -
 - (i) in the case of a reducible mortgage of immovable property, be taken at seventy-five per cent of the value of the collateral security reasonably determined; and
 - (ii) in the case of a fixed term mortgage of immovable property, be taken at sixty-six and two-thirds per cent of the value of the collateral security reasonably determined.

45. Valuation of immovable property

- (1) All advances on the security of the mortgage of immovable property made by a society under section 28 shall be based upon a valuation effected by a person appointed for the purpose by the society, who shall base such valuation upon a personal inspection: Provided that such inspection shall not be necessary in the case of vacant land with which the valuator is personally acquainted.

- (2) Every valuation shall be recorded on a prescribed form, shall be signed by the valuator and shall disclose the date of inspection.
- (3) In the case of any property (other than vacant land upon which a building is in the course of erection or about to be erected) acquired by purchase not more than six months before the date of valuation, the valuation shall not exceed the true purchase price of such property as declared by the parties concerned for transfer duty purposes, by more than one thousand rand, unless the board of the society by virtue of the information furnished to it resolves that a valuation exceeding such purchase price by more than one thousand rand is in its opinion reasonably justified.
- (4) No person shall be appointed or act as a valuator under this section if he has any direct or indirect pecuniary interest, otherwise than in respect of fees for professional legal services, in the granting of an advance, or is related within the third degree of consanguinity or affinity to any person having such an interest in the granting of an advance.
- (5) Every director, local director or member of the local committee of a society who has any interest as aforesaid in the granting of an advance, or who is related as aforesaid to any person having such an interest, shall declare the nature and extent of his interest at any meeting of the directors, local directors or local committee of the society where the granting of such advance or the valuation of any property offered as security for such advance is considered, and no such director, local director or committee member shall be present at the discussion of or the vote on any such matter or anything arising therefrom or connected therewith.
- (6) Any person who contravenes any provision of this section or who wilfully or negligently over-values any property in terms of the provisions of this section shall be guilty of an offence.

46. Societies may recover certain moneys not permitted by Act [73 of 1968](#)

In addition to the amounts which under section 5 of the Limitation and Disclosure of Finance Charges Act, 1968 (Act [73 of 1968](#)), a society would be entitled to obtain judgment for and recover in terms of a mortgage of immovable property, or any subsequent written agreement in terms of such mortgage, it may obtain judgment for and recover the following, namely -

[Act [73 of 1968](#) has been re-named the Usury Act.]

- (a) any amount disbursed by the society on behalf of the borrower in respect of -
 - (i) premiums on insurance policies designed to furnish additional security for the repayment of the advance;
 - (ii) taxes and licences in respect of the immovable property mortgaged;
 - (iii) the maintenance and repair of the said immovable property;
 - (iv) the installation of sewerage on the said immovable property;
 - (v) the provision of power, water and other necessary services on the said immovable property; and
 - (vi) the cost incurred in converting the said immovable property from leasehold to freehold; and
- (b) interest at a rate stipulated in the mortgage bond or any subsequent written agreement in terms of such bond, but not exceeding the rate at which interest is payable on the advance the repayment of which is secured by the bond, on any amount referred to in paragraph (a); and
- (c) legal costs incurred by the society in respect of legal proceedings instituted by it against a borrower for the recovery of any moneys due in terms of the mortgage bond or any subsequent written agreement in terms of such bond resulting from default on the part of the said borrower.

47. Advances and loans not invalidated by certain irregularities

An advance or loan granted by a society shall not be invalidated by reason of any contravention of this Act in connection with such advance or loan.

Chapter VI

ENQUIRIES AND INSPECTIONS

48. Registrar may demand information from society

For the purposes of carrying out the provisions of this Act the registrar may demand from any society any information or explanation in relation to any matter connected with its business or transactions, and such society shall within fourteen days (or within such further period as the registrar may allow) comply with such demand in writing, and any such information or explanation shall be furnished in such form as the registrar may direct, and shall, if he so directs, be certified by two directors and the secretary of the society.

49. Appointment of inspectors

- (1) The Central Bank shall from time to time appoint persons from among its officers or employees as inspectors under this Act.

[subsection (1) amended by Act 25 of 1990]

- (2) Whenever the registrar considers it necessary to do so, the registrar may, with the approval of the Minister, appoint a person who is not in the full-time employment of the Central Bank, as a temporary inspector to assist the registrar or an inspector referred to in subsection (1) with an inspection under this Act of the affairs or any part of the affairs of a society or any person, partnership or company referred to in section 50(6), which is not registered as a society.

[subsection (2) amended by Act 25 of 1990]

- (3) Before the registrar appoints a temporary inspector under subsection (2) he shall take all reasonable steps to ensure that the person he appoints will be able to report objectively and impartially on the affairs of the society, person, partnership or company concerned.
- (4) A temporary inspector appointed under subsection (2) shall for the purpose of any inspection for which he has been appointed have all the powers and duties of an inspector under this Act.
- (5) Every inspector and every temporary inspector so appointed shall be furnished with a certificate signed by the registrar stating that he has been appointed as an inspector or temporary inspector under this Act, which certificate he shall in the execution of any inspection under this Act, produce to any person requesting him to do so.

50. Inspection of the affairs of a society

- (1) The registrar may at any time inspect the affairs or any part of the affairs of a society or instruct an inspector to carry out such an inspection and may in particular carry out such an inspection or cause such an inspection to be carried out -
- (a) if the society has failed to render a return or statement prescribed by or under this Act within the period prescribed by or under this Act; or
- (b) if the society, after having rendered an incorrect or incomplete return or statement prescribed by or under this Act, has not corrected or completed that return or statement within a period of thirty days from the date upon which the registrar called upon it in writing to correct or complete that return or statement; or

- (c) if the society has not within such period of not less than thirty days as the registrar may determine in the written command to furnish it to him, fully and satisfactorily furnished the registrar with any information which the registrar is under this Act entitled to require it to furnish; or
 - (d) if any return furnished to the registrar by the society shows that the society has failed to comply with any material provision of this Act; or
 - (e) if the registrar considers it desirable to ascertain whether any person has or had any interest, direct or indirect, in or in the business of the society; or
 - (f) if the auditor or a branch auditor of the society reports to the registrar in terms of this Act that an irregularity or undesirable practice in the conduct of the society's affairs was reported to the society and was not corrected within the period prescribed by or under this Act or if no such period is prescribed by or under this Act, within a period of thirty days from the date upon which the irregularity or undesirable practice was reported to the society by the auditor or a branch auditor; or
 - (g) if not less than one hundred members of the society, or where the membership of the society is less than one thousand, one-tenth of all the members, or the judicial manager of the society has applied for an inspection into the affairs of the society in general or such part thereof as may be mentioned in the application.
- (2)
- (a) An application referred to in subsection (1)(g) shall be supported by such evidence as the registrar may require to prove that the applicants have good reason for requiring the investigation to be made, and that the application is not actuated by malicious motives.
 - (b) Such notice of the application referred to in subsection (1)(g) as the registrar may direct shall be given to the society.
 - (c) The applicants shall, before an inspection is carried out in terms of any such application, give security to the satisfaction of the registrar for the costs of the proposed inspection.
- (3) In order to carry out an inspection under this section, the registrar or an inspector may -
- (a) at any time during normal office hours without previous notice, enter any premises occupied by a society and require the production to him of any or all of the society's securities, books, records, accounts or documents;
 - (b) search any premises occupied by a society for any moneys, securities, books, records, accounts or documents;
 - (c) open or cause to be opened any strongroom, safe or other container in which he suspects any moneys, securities, books, records, accounts or documents of a society to be kept;
 - (d) examine and make extracts from and copies of all securities, books, records, accounts and documents of a society or, against a full receipt issued by him for such securities, books, records, accounts or documents, temporarily remove such securities, books, records, accounts or documents from the premises of the society for that purpose;
 - (e) require an explanation of any entries in the books, records, accounts or documents of a society;
 - (f) against a full receipt issued by him, seize any securities, books, records, accounts or documents of a society which in his opinion may afford evidence of any offence or irregularity;
 - (g) retain any such seized securities, books, records, accounts or documents for as long as they may be required for any criminal case or other proceedings.
- (4) In carrying out an inspection under this section, the registrar or an inspector may examine any person who is or formerly was an officer, auditor, branch auditor, attorney, agent, member, debtor

or creditor of the society under oath, in relation to the affairs of the society and he may for the purposes of such examination administer an oath or affirmation to any such person: Provided that the person examined, whether under oath or not, may have his legal adviser present at the examination.

- (5) Any person referred to in subsection (4) shall, when he is requested by the registrar or an inspector to do so, produce to the registrar or such inspector every security, book, record, account or document of the society which is in his custody or to which he has access and shall at the request of the registrar or an inspector give to the registrar or such inspector any information at his disposal relating to the affairs of the society.
- (6) The registrar may also at any time inspect the securities, books, records, accounts or documents of any person, partnership or company or instruct an inspector to carry out such inspection -
 - (a) if the registrar has reason to believe that the society the affairs of which are being inspected, has or had any direct or indirect interest in or in the business of such person, partnership or company; or
 - (b) if the registrar has reason to believe that any such person, partnership or company has or had any direct or indirect interest in or in the business of such society; or
 - (c) if the registrar considers it necessary for a proper inspection of the affairs of such society that such securities, books, records, accounts or documents be inspected,and the provisions of subsections (3), (4) and (5) shall apply mutatis mutandis in respect of such inspection.
- (7) The court may, whenever application is made to it for the winding-up of a society or for the placing of a society under judicial management, direct the registrar to exercise the powers given by this section.
- (8) A society whose securities, books, records, accounts or documents have been seized under subsection 3(f) or its lawful representative shall be entitled to examine and make entries in and extracts from them during normal office hours and under such supervision as the registrar or an inspector may determine.
- (9)
 - (a) The registrar shall prepare a report on any inspection he carried out under this section.
 - (b) An inspector shall prepare a report on any inspection he carried out under this section and transmit such report to the registrar.
 - (c) The registrar shall transmit copies of every report referred to in paragraph (a) or (b), as the case may be, to the society and to the applicants referred to in subsection (1)(g) (if any).
- (10) The registrar may, recover all expenses of and in connection with any inspection performed under this section from the applicants referred to in subsection (1)(g) or from the society or from the members or officers or former members or officers of the society in such proportions as he may determine depending on whether based on a report referred to in subsection (9) he finds that there were no good reason for the inspection or that the inspection was actuated by malicious motives or that the affairs of the society were mismanaged and that such mismanagement was due to an act or failure on the part of the members or officers or former members or officers concerned.
- (11) Any person carrying out an inspection under this section shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his duties and shall not communicate any such matter to any person whatsoever save to the registrar or the society, person, partnership or company concerned or its lawful representative or on an order of a court of law: Provided that any information obtained by the registrar in the course of an inspection under this section or from a report by an inspector may be used by the registrar or his staff in connection with any society, person, partnership or company: Provided further that if the registrar has reason to believe that an offence or irregularity affecting any department as defined in the

Government Service Act, 1980 (Act [2 of 1980](#)), has been committed, he may convey information regarding such offence or irregularity to the department concerned.

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

- (12) Subject to the provisions of the provisos to subsection (11) the registrar and every member of his staff shall preserve, or aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his official duties from any report by the registrar or an inspector.

51. Investigation by inspector appointed by society

- (1) The members of a society may at any time by special resolution appoint an inspector to investigate its affairs.
- (2) The inspector so appointed shall have the same powers and be subject to the same duties as an inspector appointed under section 49 and shall report in such manner and to such persons as the society has directed in the resolution referred to in subsection (1) and shall send a copy of such report to the registrar.

52. Offences and penalties

- (1) Any person who -
- (a) when requested by the registrar or an inspector to take an oath or to make an affirmation, refuses to do so; or
 - (b) without any lawful excuse refuses or fails to answer to the best of his ability any question relating to the affairs of a society, person, partnership or company, irrespective of whether the answer may tend to incriminate the said person or not, which the registrar or an inspector in the exercise of his powers or the performance of his duties has put to him; or
 - (c) wilfully gives any false information to the registrar or an inspector; or
 - (d) refuses or fails to comply to the best of his ability with any reasonable request made to him by the registrar or an inspector in the exercise of his powers or the performance of his duties; or
 - (e) wilfully hinders the registrar or an inspector in the exercise of his powers or the performance of his duties; or
 - (f) refuses to produce any securities, books, records, accounts or documents in his custody or under his control when required to do so by the registrar or an inspector under section 50(3) (a); or

[The phrase “to do so” should be “to do so”.]

- (g) contravenes or fails to comply with any provision of section 50(5), (6), (11) or (12), shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.
- (2) Any person who, having taken an oath or made an affirmation before the registrar or an inspector knowingly makes any false statement in relation to any matter which is the subject of an inspection, shall be guilty of an offence and liable on conviction to the penalties applicable in respect of the crime of perjury.

Chapter VII

AMALGAMATION, TRANSFER OF ASSETS AND LIABILITIES, JUDICIAL MANAGEMENT, WINDING-UP AND DISSOLUTION

[heading of Chapter VII substituted by Act 25 of 1994]

52A. Amalgamation and transfer of assets and liabilities

- (1) If the prior written approval of the Minister has been obtained therefor -
 - (a) two or more societies may amalgamate to become one society;
 - (b) a society may transfer all or part of its assets and liabilities to another society or to a bank.
- (2) The proposed agreement embodying the terms and conditions of any amalgamation or transfer of assets and liabilities as contemplated in subsection (1), shall be furnished in advance to the registrar who shall submit such proposed agreement to the Minister, together with any recommendations which the registrar considers necessary or expedient to make in connection therewith.
- (3) The Minister may, with due regard to any recommendations made by the registrar, and subject to subsection (4) -
 - (a) grant approval for the proposed amalgamation or transfer on the terms and conditions as set out in the proposed agreement; or
 - (b) if the Minister considers it necessary that any modifications should be made to such terms and conditions, refer the proposed agreement back to the parties concerned for reconsideration in the light of the modifications suggested by the Minister.
- (4) The Minister shall not grant his or her approval for any amalgamation or transfer of assets and liabilities under subsection (3)(a), unless the Minister is satisfied -
 - (a) that such transaction will not be detrimental to the public interest or cause undue hardship to the members of any of the parties involved in the proposed amalgamation or transfer of assets and liabilities, as the case may be; and
 - (b) in the case of an amalgamation of societies or the transfer of assets and liabilities from one society to another society, that the proposed agreement specifically provides that there shall be no division of the profits or of any of the reserves of the societies concerned among their members, but subject to subsection (15).
- (5) No transaction involving an amalgamation or transfer of assets and liabilities contemplated in subsection (1) shall be of any force and effect unless -
 - (a) the Minister has granted his or her approval therefor under subsection (3)(a); and
 - (b) the provisions of the agreement for the contemplated amalgamation or transfer is confirmed by special resolution of the members or shareholders, as the case may be, of each of the parties involved in the amalgamation or transfer.
- (6) The notice convening a special general meeting for the confirmation by special resolution of any such amalgamation or transfer, as required by subsection (5)(b), shall contain or have attached to it the complete terms and conditions of the relevant agreement as approved by the Minister, whether with or without modifications.
- (7) Notice of the passing of the special resolution as required by subsection (5)(b), together with a copy of such resolution and the full terms and conditions of the proposed amalgamation or transfer, duly certified by two directors and the secretary of each of the parties concerned, shall be sent by each of those parties to the registrar and shall be registered by him or her.

- (8) The amalgamation or transfer shall take place upon the terms and conditions set forth in such resolution.
- (9) Upon registration by the registrar of the appropriate notices referred to in subsection (7) -
- (a) in the case of an amalgamation of societies -
 - (i) the individual societies involved in the amalgamation shall be deemed to be dissolved and the registrar shall cancel their registration, register the new society as a building society and issue to such society the relevant certificate of registration in accordance with subsection (10); and
 - (ii) all the assets and liabilities of the societies involved in the amalgamation shall become the assets and liabilities of the new society registered in their stead;
 - (b) in the case of a transfer of assets and liabilities of a society to another society or to a bank -
 - (i) where all the assets and liabilities of the society are transferred, that society shall be deemed to be dissolved and its registration shall be cancelled by the registrar;
 - (ii) all the assets and liabilities of the society giving transfer which are included in such transfer shall become the assets and liabilities of the society or the bank to which they are transferred.
- (10) A registration in terms of subsection (9)(a)(i) shall -
- (a) where all the parties to the amalgamation in question were finally registered as societies, be a final registration;
 - (b) where all the parties to the amalgamation in question were provisionally registered as societies, be a provisional registration; or
 - (c) where some of the parties to the amalgamation were finally registered and some parties were provisionally registered as societies, be either a final or provisional registration, as the registrar may determine.
- (11) The provisional or final registration of a society in terms of subsection (9)(a)(i) and a certificate of provisional or final registration issued to a society in terms of that subsection, shall be deemed to be a provisional or final registration, as the case may be, of such society, and a certificate of provisional or final registration, as the case may be, issued, in terms of section 4.
- (12) The liquidator of a society which is being wound up voluntarily or by the court, or the judicial manager of a society, may transfer all the assets and liabilities of the society being wound up or under judicial management to another society or a bank: Provided that subsections (5)(b) and (6) shall not apply to a society which is being wound up.
- (13) Where a new society registered as a result of an amalgamation of societies or a society or bank which has acquired assets as a result of a transfer of assets and liabilities of a society, produces to the Registrar of Deeds -
- (a) any mortgage bond or the title deed of any immovable property registered in his or her office which is transferred to that amalgamated society in accordance with the provisions of subsection (9)(a)(ii) or, as the case may be, to that society or bank in accordance with the provisions of subsection (9)(b)(ii); and
 - (b) a certificate by the registrar of the registration by him or her of the notice of amalgamation or transfer, as the case may be,
- the Registrar of Deeds shall make such endorsements upon such mortgage bond or title deed and effect such entries in his or her registers as are necessary to record the transfer thereof to the amalgamated society or, as the case may be, the society or the bank taking over the said assets and liabilities.

- (14) The amalgamation of societies or the transfer of assets and liabilities of a society, in accordance with the provisions of this section, shall not affect the rights of any creditor of any societies involved in the amalgamation or, as the case may be, any creditor of the society transferring assets and liabilities in respect of any liability which is included in such transfer, and any such right may be enforced against the amalgamated society or, as the case may be, the society or bank taking over that liability, as if such right had originally accrued against the amalgamated society or the society or bank receiving transfer.
- (15) The provisions of paragraph (b) of subsection (4) shall not be construed as preventing the making of reasonable provision out of the profits of a society for compensation to its officers (other than directors, alternate directors, local directors or members of local committees) for any resulting loss of office or for payment in recognition of past services rendered by such officers.
- (16) In the case of a transfer of assets and liabilities of a society to a bank, provision may, subject to subsection (18), be made in the relevant transfer agreement for compensation to members of the society, taking into account the unimpaired reserves of the society, by way of either a cash payment or a right to take up shares in the transferee bank or its controlling company, and provision may be so made for compensation to officers of the society mutatis mutandis in accordance with the provisions of subsection (15).
- (17) The basis on which and conditions subject to which compensation contemplated in subsection (16) to members shall take place, and also the amount of the unimpaired reserves of the society on the date of the latest return submitted to the registrar in terms of section 32, and, in the case of cash payments, also the estimated total amount of such payments, shall be furnished in the relevant transfer agreement.
- (18) A resolution to offer compensation referred to in subsection (16) to members, shall be approved by both parties to the relevant transfer agreement, by separate special resolution, and shall provide that -
 - (a) only a member who on the day immediately before the date determined for the transfer of assets and liabilities held shares in the transferor society and which shares had been issued to such a member at least 12 months before that date, or which had been paid for out of the proceeds of shares redeemed by that society during that 12 months, shall qualify for such compensation; and
 - (b) such a member shall nevertheless not be entitled to the compensation if he or she -
 - (i) is not resident in Namibia; or
 - (ii) is a body corporate which is not incorporated in Namibia.
- (19) Upon the transfer of assets and liabilities from a society to a bank, all investments in the form of shares issued by the society which have not yet been redeemed before the date of the transfer of its assets and liabilities, and which are included in such transfer, shall be deemed to be fixed deposits with the transferee bank.
- (20) The conditions and any tax benefit which immediately before the date of transfer of assets and liabilities were applicable in respect of an investment in the form of shares referred to in subsection (19) shall, notwithstanding the provisions of that subsection, but subject to the provisions of the Income Tax Act, 1981 (Act [24 of 1981](#)), continue to apply to the investment for a period of 4 years as from the date of transfer, if it is not redeemed sooner.

[section 52A inserted by Act [25 of 1994](#)]

53. Judicial management

- (1) Subject to the provisions of this Act, the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), relating to the judicial management of companies, shall mutatis mutandis apply to every society.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

- (2) A judicial management order in respect of a society may be granted by the court on the application of the registrar or of the society.

54. Voluntary winding-up of society

- (1) A society may be wound up voluntarily if the members so decide by special resolution.
- (2) Subject to the provisions of this section, the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), relating to the voluntary winding-up of companies, shall mutatis mutandis apply to every society.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

- (3) In the application of the said provisions in terms of subsection (2), section 350(1)(a) of the said Act shall be construed as if after the word “Master” there were inserted the words “and the Registrar of Building Societies”.
- (4) The liquidator in a voluntary winding-up of a society shall, until such time as the society is dissolved, annually send to the registrar an account, balance sheet, the statement to be annexed to the balance sheet and the subsidiary statements which in terms of section 33 have to be sent to him by a society.
- (5) The liquidator of the society shall forward to the registrar a copy of every notice or account which in terms of the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), he is required to furnish to the Master of the Supreme Court.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

55. Winding-up by court

- (1) Subject to the provisions of this section, the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), relating to the winding-up of companies by the court, shall mutatis mutandis apply to every society.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

- (2) An order for the winding-up of a society may be granted by the court on the application of any creditor or of the registrar or of the judicial manager of the society.
- (3) The court may give to the liquidator such directions as may appear to it to be suitable in the circumstances, due regard being had to the interests of members and creditors of the society.
- (4) The court shall not make an order for the winding-up of a society unless the court is satisfied that it is not desirable that the society be placed under judicial management.
- (5) The provisions of section 54(3), (4) and (5) shall mutatis mutandis apply in the case of the winding-up of a society by the court.

56. Appointment of judicial manager and liquidator

Notwithstanding the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), as applied by sections 53 and 55 of this Act, no person other than a person recommended by the registrar shall be appointed by the Master of the Supreme Court as judicial manager, provisional judicial manager, liquidator or provisional liquidator of a society.

[The Companies Act [61 of 1973](#) has been replaced by the Companies Act [28 of 2004](#).]

57. Dissolution of society

Immediately after the confirmation of the final account in the winding-up of a society which is wound up under the provisions of the Companies Act, 1973 (Act [61 of 1973](#)), as modified and applied by sections

54 and 55 of this Act, the Master of the Supreme Court shall give notice thereof to the registrar, who shall register it and cancel the registration of the society and thereupon the society shall be dissolved.

[The word “notice” is misspelt in the Official Gazette, as reproduced above. The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

58. Limitation of liability of members

When a society is being wound up the liability of any member in respect of any share shall be limited to the amount in arrear on such share at the commencement of such winding-up: Provided that no member shall be entitled to claim repayment of any amount actually paid on any such share unless the claims of all creditors of the society have been paid in full: Provided further that if a member has received any advance or loan from the society, he shall be liable to repay the full amount owing by him in respect of such advance or loan.

59. Liability of borrowers in winding-up

When a society is being wound up, any member or other person to whom an advance or a loan has been made under any mortgage or other security or under the rules of the society shall not be liable to pay the amount payable under such mortgage, security or rules except at the time or times and subject to the conditions expressed therein or agreed upon.

Chapter VIII GENERAL PROVISIONS

60. Societies to provide against loss through negligence or dishonesty of their officers and agents

- (1) A society shall either maintain a fund which in the opinion of the registrar is adequate and which is reserved exclusively for the purpose of making good any loss resulting from the negligence or dishonesty of any one or more of its officers or agents, or shall insure itself against such loss to an amount which is not less than an amount which the registrar deems adequate, with a person approved of by the registrar carrying on insurance business or the business of guaranteeing employers against any such loss.
- (2) The assets of any fund maintained in terms of this section may be invested in deposits with the society but shall not in any other way be merged with the assets of the society.

61. Auditors of society

- (1)
 - (a) Every society shall have one or more auditors.
 - (b) Any such auditor shall be an accountant and auditor registered under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), who is engaged in public practice, and no officer of a society and no firm of which such an officer is a member or an employee, shall be appointed as an auditor of that society.
- (2) The board shall within thirty days from the date of the registration of the society appoint one or more auditors who shall remain in that office until he -
 - (a) is removed from office by a resolution of the members of the society at a general meeting; or
 - (b) becomes disqualified for appointment; or
 - (c) notifies the society in writing that he is desirous of vacating his office.

- (3) The board or the main auditors acting with the consent of the board may appoint a branch auditor to any branch of the society who shall remain in that office until -
 - (a) he is removed from office by a resolution of the members of the society at a general meeting; or
 - (b) he becomes disqualified for appointment; or
 - (c) he notifies the society in writing that he is desirous of vacating his office; or
 - (d) his appointment is terminated by the board or by the main auditors with the consent of the board.
- (4) A resolution at a general meeting removing an auditor or a branch auditor from office under this section shall not be effective unless notice of intention to move such a resolution has been given to the society not less than thirty days before the meeting at which it is moved.
- (5) A society shall give notice to its members of its intention to move such a resolution at the same time and in the same manner as it gives notice of the meeting.
- (6) On receipt of the notice referred to in subsection (4) the board shall forthwith send a copy thereof to the auditor or branch auditor intended to be removed from office.
- (7) Whenever an auditor vacates his office the board shall within thirty days appoint another auditor or cause another auditor to be appointed in his place.
- (8) Where the auditor of a society is a partnership, the appointment of such auditor shall not lapse by reason of a change in the composition of the partnership, but if more than half of the partners of the reconstituted partnership are persons who were not partners thereof at the date when the appointment of the partnership was last approved by the registrar, the appointment of the partnership shall have to be approved by the registrar afresh.
- (9) If a society or its board fails to appoint an auditor as and when an auditor has to be appointed in terms of this section, the registrar shall make such an appointment.
- (10) In the event of an appointment in terms of subsection (9) the registrar shall, in consultation with the auditor, determine the remuneration to be paid to the auditor for his services by the society, and if the society fails to pay the remuneration the Secretary for Finance shall pay such remuneration out of public funds and the Secretary for Finance shall recover an amount equal to that remuneration from the society.
- (11) Every auditor appointed under this section shall have a right of access to the securities, books, accounts and vouchers of the society and may require from its officers and agents such information as may be necessary for the performance of his duties as auditor: Provided that in the case of a branch auditor the aforementioned provisions shall apply only in respect of matters pertaining to the branch of which he has been appointed auditor.
- (12) Every auditor of a society shall report to the board of that society any material irregularity or undesirable practice in the conduct of the business of that society which has come to his notice, and if that irregularity or undesirable practice is not rectified or discontinued within a period of one month from the date upon which it was reported to the board, the auditor shall report it to the registrar.
- (13) Every branch auditor shall report to the board on the returns made up annually by the branch of which he has been appointed auditor and shall state in his report whether or not in his opinion the returns contain the necessary information relating to the operations of the branch so as to enable the main auditors of the society to report in terms of subsection (15).
- (14) A copy of every report submitted to the board by a branch auditor, whether dealing with an irregularity or undesirable practice or with any other matter, shall forthwith be transmitted to the main auditors of the society by such auditor.

- (15) The main auditors shall report to the members on any revenue and expenditure account and balance sheet of the society made up in terms of section 33(2) and shall state whether in their opinion the account and balance sheet are properly made up so as to exhibit a true and fair view of the revenue and expenditure and financial position, respectively, of the society.
- (16) Any auditor of a society, however appointed, shall be entitled to attend any meeting of members of such society and to make thereat any statement that he desires to make in relation to any return, account or balance sheet examined by him or report made by him or to make representations in relation to any matter affecting his appointment, removal or remuneration.
- (17) A society shall within fourteen days of the appointment of an auditor under this section apply to the registrar for his approval of the appointment.
- (18) The registrar may without assigning any reason therefor, refuse to approve of any such appointment or withdraw his prior approval and thereupon the auditor concerned shall vacate his office as auditor.
- (19) When the registrar has refused to approve of the appointment of an auditor or has withdrawn his approval of the appointment of an auditor in terms of subsection (18), the board shall appoint some other person as auditor or cause steps to be taken with a view to such appointment, but again subject to the approval of the registrar.
- (20) For the purposes of exercising his powers under subsections (17), (18) and (19), the registrar may call for such information as he may deem necessary in regard to the experience or qualifications of an auditor, and such information shall be furnished by such auditor in such form as the registrar may direct.
- (21) If a society or its board fails to comply with any requirements of this section it shall be guilty of an offence.

62. Minors

Unless otherwise provided by the rules of the society, a minor over the age of sixteen years may be a member of or depositor with any society and may without the consent or assistance of his or her guardian execute all necessary documents, give all necessary acquittances and cede, pledge, borrow against and generally deal with his or her share or deposit as he or she thinks fit, and shall enjoy all the privileges (except that a minor shall not hold office) and be liable to all the obligations attaching to members or depositors.

[section 62 substituted by Act 1 of 1996]

63. Application for shares, or for leave to make deposits

- (1) No person shall be permitted to become a member of or a depositor with a society unless he has signed a form applying for shares in the society or to be allowed to make deposits with the society, as the case may be.
- (2) Every person signing any such form shall upon request be furnished with a copy thereof by the society.
- (3) Every such form shall have printed or written thereon the whole of section 58.

64. Share certificates, pass books and fixed deposit receipts

- (1) Every person to whom a share is allotted by a society or who is allowed to make deposits with such a society shall receive a share certificate, subscription share pass book, savings deposit pass book, fixed deposit receipt or other form of record, as the case may be, duly signed in the manner prescribed by the rules of the society.

- (2) If any share certificate, subscription share pass book, savings deposit pass book, fixed deposit receipt or other form of record issued by a society is lost or destroyed, the society may, upon such evidence being furnished and subject to such terms and conditions as are set out in the rules of the society issue a certified copy of such certificate, pass book, receipt or other form of record.
- (3) A certified copy issued in terms of this section shall for all purposes take the place of the certificate, pass book, receipt or other form of record lost or destroyed and be the sole evidence thereof.

65. Power of registrar in connection with advertisements and other documents

- (1) A society shall upon receipt of a written request by the registrar to that effect discontinue the publication or the issue of any advertisement, brochure, prospectus or similar document specified in the request, which in the opinion of the registrar is not a correct statement of fact or not in the public interest.
- (2) Any society which fails to comply with a request of the registrar under subsection (1) shall be guilty of an offence.

66. Admissibility in evidence of certified documents

Every document purporting to be certified by the registrar to be a document deposited at his office under the provisions of this Act shall, in the absence of proof to the contrary, be deemed to be such document, and every document purporting to be similarly certified to be a copy of such document, shall be deemed to be a true copy thereof, and shall be received in evidence as if it were the original document, unless some variation between that document and the original document is proved.

67. Inspection of documents

- (1) Upon payment of the prescribed fees any person may obtain from the registrar a certificate of the registration of any society or a certified copy thereof and may inspect and make or obtain a copy of or an extract from the rules of a society or any of the undermentioned documents lodged in relation to the last ten preceding calendar years with the registrar by any society, but no other documents, namely -
 - (a) the monthly return referred to in section 32; and
 - (b) the annual account and balance sheet referred to in section 33, the statement annexed to the said balance sheet in terms of section 33(6)(a), the subsidiary statements referred to in section 33(10) and the auditor's report; and
 - (c) the names and addresses of the directors of the society.

68. Carrying on business by unregistered society and use of designation "building society"

- (1)
 - (a) No person shall carry on the business of a building society or apply to his business a name which includes the words "building society" or any other name which is calculated to indicate that he carries on the business of a building society, unless such business is registered as a building society under this Act.
 - (b) Any person who contravenes the provisions of paragraph (a) shall be guilty of an offence.
- (2) Where persons referred to in section 3(2) or an association of persons is in the course of forming a building society, such persons or association shall not be deemed to be carrying on business as a building society by reason only of that fact that it issues shares for the purposes of meeting the requirements of section 8, provided the terms on which such shares are offered have previously been approved of by the registrar.

69. Only society may claim to be successor of or to be connected with building society

Any person other than a society or an agent of a society who in any letter, account or other document or by advertisement or in any other medium or manner of announcement to the public states that he is the successor of or carries on business or has the authority to carry on business for, on behalf of or in favour of a building society shall be guilty of an offence.

70. Acceptance of benefits

- (1) No officer of a society shall receive from any person and no person shall offer or give to any officer of a society any benefit whatsoever for or in connection with any advance made by the society.
- (2) No officer of a society or firm in which such officer has a direct interest shall purchase or be interested in the purchase of any property owned by or mortgaged to the society and sold by or at the instance of the society, unless the property is purchased at a duly advertised public sale or the sale is approved by the registrar.
- (3) Any person who contravenes any provision of subsection (1) or (2) shall be guilty of an offence.
- (4) Any person who accepts any benefit referred to in subsection (1) shall, if the court by which he is convicted so directs, pay over to the society the amount or value of such benefit, and any person who fails to comply with any such direction of the court, shall be guilty of an offence.

71. Withholding money or other effects of society

- (1) Any person not entitled thereto who has in his possession any moneys, securities, books, records, accounts, papers or other effects of a society and who withholds or misapplies the same or wilfully applies the same or any part thereof to purposes other than those expressed in the rules of the society and authorised by this Act, shall be guilty of an offence.
- (2) A person referred to in subsection (1) shall, if directed to do so by the court by which he is convicted, deliver up to the society all such moneys, securities, books, records, accounts, papers or other effects concerned and repay the amount of money or the value of the other effects applied to an unauthorised purpose by him and shall, if he fails to comply with any such direction of the court, be guilty of an offence.

72. Default in rendering accounts, furnishing information and giving notice and other offences

- (1) Any society or any association of persons referred to in section 9 which fails -
 - (a) to render to the registrar within the period fixed by or in terms of this Act any account, balance sheet, statement or other document required by this Act to be rendered to the registrar by it; or
 - (b) when required by the registrar to amend or complete any document referred to in paragraph (a), so to amend or complete such document; or
 - (c) to furnish to the registrar upon demand by him any information required by him for the purposes of this Act; or
 - (d) in the case of a society, to lodge or send any notice or perform any act which the society is by this Act required to lodge, send or perform,shall be guilty of an offence.
- (2) Any person who prevents the registrar or any inspector appointed under section 49 or 51 or any auditor appointed in terms of section 61 or any person deputed by the registrar or any such inspector or auditor from performing his functions as registrar or as such an inspector or auditor

or as a person so deputed, or hinders the registrar or such an inspector or auditor or any person so deputed in the performance of any of those functions, shall be guilty of an offence.

- (3) Any person who signs any statement, return or report or makes any statement or orders or allows any statement to be made or gives any information, whether oral or in writing, for which provision is made in this Act, knowing such statement, return, report or information to be false or incorrect, shall be guilty of an offence.
- (4) Any person who contravenes or fails to comply with any provision of this Act applicable to him, the contravention of or failure to comply with which is not elsewhere in this Act declared to be an offence, shall be guilty of an offence.
- (5) Whenever any person has been convicted of any offence in terms of this Act, every continuation after his conviction of the contravention of which he was convicted, shall constitute a fresh offence.

73. Default in maintaining prescribed ratio or proportion

- (1) If at any time any society fails to maintain any ratio or proportion prescribed by this act, such society shall report the fact of such failure in writing to the registrar within a period of twenty-one days after the close of the calendar month during which such failure first occurred.
- (2) Whenever the registrar receives a notice referred to in subsection (1), he shall direct the society to take such steps as, will in his opinion be necessary to correct such deficiency or excess within a period fixed by him, and he may from time to time for good cause shown extend the period so fixed.
- (3) The society shall notify the registrar as soon as any such deficiency or excess has been corrected, and the fact that it has been corrected shall within a period of forty days after the date on which it was corrected be substantiated by statements certified by the auditors of the society.

74. Penalties

- (1) Every person convicted of an offence contemplated in -
 - (a) section 8, shall be liable to a fine not exceeding five thousand rand;
 - (b) section 45(6) or section 68(1)(b), shall be liable to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
 - (c) any other provision of this Act, shall be liable to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.
- (2) Any society or any association of persons referred to in section 9 which contravenes the provisions of section 72(1)(a) shall, whether or not it has been convicted of such a contravention, and in addition to any punishment that may be or may have been imposed under subsection (1) of this section, be liable to a penalty of fifty rand for every day during which the contravention continues, and the registrar may recover such penalty or such portion thereof as in his opinion he is in the circumstances justified in recovering from such society or association by action in any competent court.
- (3) Whenever the registrar is satisfied that a failure referred to in section 73(1) has taken place, he may, unless it is proved to his satisfaction that the failure took place as a result of circumstances beyond the control of the board of the society concerned, impose upon the society a penalty not exceeding one-tenth of one per cent of the aggregate of the deficiencies or excesses that existed on every day that the society was in default as contemplated in the said section 73(1).
- (4) Whenever the registrar is satisfied that any society after receiving a direction from the registrar under section 73(2), has failed to correct the deficiency or excess in question within the period fixed by the registrar, as extended from time to time, he may impose upon the society a penalty not

exceeding one-tenth of one per cent of the aggregate of the deficiencies or excesses that existed on every day after the expiration of that period as so extended.

- (5) Every penalty referred to in subsection (3) or (4) of this section may be recovered by the registrar by action in any competent court from the society or from one or more or all of the directors in such proportions as he may fix: Provided that the registrar shall not recover from any director any portion of any such penalty if he is satisfied that the failure by reason of which the penalty was imposed did not take place with the permission or connivance of such director and that such director took all such steps as he could reasonably have been expected to take to prevent the said failure.
- (6) A director from whom any amount has been recovered in terms of subsection (5) shall not be entitled to recover the whole or any portion of that amount from the society or any other director.
- (7) All penalties recovered in terms of this section shall be paid into the Central Revenue Fund.

75. Prescribed fees

- (1) There shall be paid in respect of the several matters mentioned in the First Schedule to this Act, or in that Schedule as amended or supplemented in terms of subsection (2), the several fees specified in that Schedule as so amended or supplemented.
- (2) The Minister may from time to time by notice in the Official Gazette amend or add further matters to the said Schedule and specify the fees payable in respect of any matter so added.

76. Annual licence

- (1) Every society shall on or before the thirty-first day of January in every year or, in the case of a society registered after the first day of January of any specific year, within thirty days after the date of registration of the society obtain a building society licence for that year.
- (2) For such a licence there shall be paid to the receiver of revenue concerned an amount of twenty-five rand in licence fees: Provided that if the licence is obtained after the date on which it had to be obtained in terms of subsection (1), there shall be paid by way of an additional licence fee a further sum equal to ten per cent of the amount of such licence fee for each month or part of a month after the said date it is being obtained: Provided further that the amount of such additional licence fee shall not exceed the amount of the licence fees.
- (3) All moneys payable under this section shall be debts due to the State, and shall be recoverable by the Secretary for Finance by action in any competent court.
- (4) For the purposes of this section "year" means a year ending on the thirty-first day of December.

77. Annual report by registrar

The registrar shall annually submit to the Minister a report on the working of all societies and on matters relating to such societies which have been dealt with by him during the year, and the Minister shall lay the report on the Table in the National Assembly.

78. Regulations

The Minister may make regulations -

- (a) with regard to all matters which by this Act are required or permitted to be prescribed by regulation;
- (b) prescribing the form of any document referred to in this Act for which provision is not otherwise made in this Act, or prescribing amendments of or additions to any such form;
- (c) generally, as to all matters which it may consider necessary or expedient to prescribe in order that the objects of this Act may be achieved.

79. Repeal of laws

- (1) Subject to the provisions of subsections (2) and (3), the laws mentioned in the Second Schedule are hereby repealed or amended to the extent set out in the third column of the said Schedule.
- (2) Any regulation made or anything else done under any law repealed by subsection (1), shall, in so far as it is not contrary to or inconsistent with this Act, be deemed to have been made or done under the corresponding provisions of this Act.
- (3) In the case of any society which is in terms of section 4(10) deemed to have been registered under this Act and the rules of which are in terms of subsection (2) deemed to have been approved under this Act -
 - (a) any reference in the said rules -
 - (i) to founder's shares;
 - (ii) to a founder shareholder and any liability of any such founder shareholder;
 - (iii) to a founder meeting and the business or functions of any such founder meeting or to anything connected with any such founder meeting or any such business or functions, shall for the purposes of the application of such rules, be deemed to have been deleted;
 - (b) such rules shall for the purposes of the application thereof be deemed to provide -
 - (i) that all directors shall be elected at the annual general meeting of shareholders of the society;
 - (ii) that the annual remuneration of every director shall be fixed by the board of directors of the society;
 - (c) any vacancy which occurs on the board of directors of the society as a result of the vacating of his office by any director which had been appointed under a law repealed by subsection (1) shall, for the purposes of the application of such rules, be deemed to be a casual vacancy.

80. Short title and commencement

This Act shall be called the Building Societies Act, 1986, and shall come into operation on 1 April 1986.

FIRST SCHEDULE
PRESCRIBED FEES

1. For certificate of provisional registration of a society	R	100,00
2. For certificate of registration of a society	R	50,00
3. For certificate of registration of change of name	R	30,00
4. For registration of amendment of rules	R	50,00
5. For every document required to be authenticated by registrar, and not chargeable with any other fee	R	5,00
6. For every inspection, in terms of section 67, of the monthly returns for a particular month, the annual accounts for a particular financial year, the rules or the names and addresses of the directors of a society.	R	5,00
7. For any photostatic or double-spaced typewritten copy of or extract made by the registrar, per A4 sheet or portion thereof	R	0,50
8. For written confirmation of the fact of registration, change of name or amendment of rules of society	R	5,00
9. For examination of every copy certified as a true copy of a document in the custody of the registrar where the copy so certified was not made by the registrar (in addition to the fee for the signature of the registrar), per A4 sheet or portion thereof	R	5,00

10. For searching for documents for purposes of item 6 or 7	R	5,00
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No fee is payable for any document or copy of a document supplied to a department as defined in the Government Service Act, 1980 (Act [2 of 1980](#)).

[The Government Service Act [2 of 1980](#) has been replaced by the Public Service Act [13 of 1995](#).]

The registrar may dispense with the fee in cases where he is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering some public interest.

SECOND SCHEDULE
LAWS REPEALED OR AMENDED

COLUMN 1	COLUMN 2	COLUMN 3
NO. AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
Act 24 of 1965	Building Societies Act, 1965	The repeal of the whole
Act 99 of 1967	Financial Institutions Amendment Act, 1967	The repeal of sections 3 and 4
Act 64 of 1968	Building Societies Amendment Act, 1968	The repeal of the whole
Act 91 of 1969	Building Societies Amendment Act, 1969	The repeal of the whole
Act 23 of 1970	Financial Institutions Amendment Act, 1970	The repeal of sections 7 to 10
Act 57 of 1971	Suretyship Amendment Act, 1971	The amendment of the Schedule by the deletion of the entries relating to the Building Societies Act, 1965
Act 91 of 1972	Financial Institutions Amendment Act, 1972	The repeal of sections 18 and 19
Act 67 of 1973	Financial Institutions Amendment Act, 1973	The repeal of sections 5 to 13
Act 101 of 1976	Financial Institutions Amendment Act, 1976	The repeal of sections 54 to 56
Act 94 of 1977	Financial Institutions Amendment Act, 1977	The repeal of sections 22 and 23
Act 80 of 1978	Financial Institutions Amendment Act, 1978	The repeal of sections 22 to 31

Proclamation AG. 9 of 1977	South West African Building Society Proclamation, 1979	The repeal of the whole
Act 103 of 1979	Financial Institutions Amendment Act, 1979	The repeal of sections 32 and 33
Act 99 of 1980	Financial Institutions Amendment Act, 1980	The repeal of sections 50 to 55
Act 19 of 1981	South West African Building Society Amendment Act, 1981	The repeal of the whole
Act 36 of 1981	Financial Institutions Amendment Act, 1981	The repeal of sections 26 to 31
Act 82 of 1982	Financial Institutions Amendment Act, 1982	The repeal of sections 18 and 19
Act 38 of 1984	Inspection of Financial Institutions Act, 1984	The repeal thereof in so far as it relates to building societies
Act 46 of 1984	Corporation for Public Deposits Act, 1984	The amendment of the Schedule by the deletion of the entries relating to the Building Societies Act, 1965
Act 86 of 1984	Financial Institutions Amendment Act, 1984	The repeal of sections 34 to 37
Act 106 of 1985	Financial Institutions Amendment Act, 1985	The repeal of sections 37 to 41