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Building Societies Act, 1962

Act 1 of 1962

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Building Societies Act, 1962

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Building Societies Act, 1962

Act 1 of 1962

Commenced on 1 April 1962

[This is the version of this document at 1 December 1998.]

An Act to provide for the control of Building Societies.

Part I – Preliminary

1. Short title

This Act may be cited as the Building Societies Act, 1962.

2. Interpretation

In this Act, unless the context otherwise requires—

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

“**approved investment**” means an investment approved in terms of [section 17\(1\)\(j\)](#);

“**authorised deposit**” means a deposit mentioned in [section 17\(1\)\(g\)](#);

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

“**building society**” means an association of persons—

- (a) whose name or title contains the words “**building society**”; or
- (b) whose principal object 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 any purpose upon the security of the mortgage of immovable property;

[Amended K.O-I-C. 2/2004]

but does not include a terminating society;

“**call deposit**” means a deposit which can be withdrawn on demand;

[Added A.16/1992]

“**cession**” means a cession of a registered lease of immovable property, the unexpired period of which is at the date of cession not less than thirty years;

“**Court**” means the High Court and in relation to any offence under this Act includes a Magistrate’s Court having jurisdiction in respect of that offence;

“**director**” includes any person occupying the position of director or alternate director of a society by whatever name he may be called;

“**fixed deposit**” means a deposit for a period which is fixed in accordance with the provisions of [section 19\(e\)](#);

“fixed-period share” means a paid-up share issued for a period of three years or longer which may not be redeemed before the expiry of the period for which it is issued, except as otherwise provided under [section 24](#) of this Act;

[Amended A.10/1970; A.7/1980]

“fixed term advance” means an advance on terms and conditions which provide for the repayment of the capital amount advanced within a fixed period;

“general reserve fund” means a general reserve fund established by a society other than a statutory reserve fund and built up out of profits and not set aside for any specific purpose;

“immovable property” means any piece of land not exceeding fifty hectares in extent for which there is title which is registered with the Registrar of Deeds;

[Added K.O-I-C. 12/1974; Amended A.7/1980; Replaced K.O-I-C. 2/2004]

“Magistrate’s Court” means a subordinate Court established under the Magistrate’s Court Act, [No. 66 of 1938](#);

“member” in relation to a society means a person who holds shares therein, whether fully or partly paid-up, which participates in the profits thereof whether or not such shares are held by the society as security for an advance;

“Minister” means the Minister responsible for Finance;

[Replaced K.O-I-C. 2/2004]

“mortgage” means a mortgage of immovable property;

[Amended A.7/1980]

“officer” in relation to a society means any director, manager, secretary, clerk, agent or other employee of the society but does not include an auditor of the society;

“permanent share” means a fully paid-up share of which the holder shall not be entitled at any time to demand redemption but which the society may redeem after six months’ notice to the holder if its rules so provide;

“reducible advance” means an advance on terms and conditions which provide for the redemption of the capital amount advanced by periodical payments;

“Registrar” means the Governor of the Central Bank of Swaziland established under the Central Bank of Swaziland Order, 1974;

[Amended K.O-I-C. 35/1976; replaced K.O-I-C. 2/2004]

“regulation” means a regulation made under [section 83](#);

“savings deposit” means a deposit other than fixed deposit;

[Replaced K.O-I-C. 2/2004]

“secretary” in relation to a society includes any executive officer of the society acting in the capacity of secretary;

“statutory reserve fund” means a statutory reserve fund established in terms of [section 39](#);

“subscription share” means a share which—

- (a) is paid for by periodical contributions; and
- (b) may not be redeemed before the expiry of the maturity period, except as otherwise provided under [section 24](#) of this Act;

[Amended P.3/1964; A.7/1980; K.O-I-C. 2/2004]

“terminating society” means an association which by its rules has no power to accept deposits or to borrow money otherwise than from another section of the same society, and which is bound to terminate on the expiry of a fixed period or upon the occurrence of an event specified, or the rules of which provide for the organisation of its members in sections, for the separate administration of the affairs of each section or the joint administration of the affairs of all sections and for the termination of each section upon the expiry of a fixed period or upon the occurrence of an event specified in the rules;

[Amended P.3/1964]

“transmission account” means an account opened on behalf of a depositor into which the depositor may deposit money and from which the building society may in accordance with the instructions of the depositor make a payment on demand to the depositor or any other person or transfer an amount to any other account, and the building society may, subject to such conditions as it may determine, allow such payment from the account to exceed the depositor’s credit balance in the account;

[Added A.16/1992]

“urban”; *[Repealed A.7/1980]*

“valuator” means a person appointed by a building society under section 33(1) read with section 34.

3. Application of Act

This Act shall apply to every building society.

4. Name of terminating society

- (1) No terminating society shall carry on business unless the word “terminating” forms part of its name or title.
- (2) Any society which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni.

Part II – Registration of societies and matters incidental thereto

5. Prohibition of unregistered society

- (1) No society, association or company shall carry on business as a building society unless it is registered in terms of this Act.
- (2) Any society, association or company which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni.

6. Mode of forming a building society

Any seven or more persons may form a building society by subscribing their names and addresses to rules agreed to by them for the government of such society, and by obtaining registration under this Act.

7. Matters which must be provided in rules of a building society

- (1) The rules of every building society shall provide for the following matters:
 - (a) the name of such society and the situation in Swaziland of its head office or in the case of a foreign building society registered under this Act the name of the society and the situation and postal address of its principal office in Swaziland;
 - (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 a person may become a member and may cease to be a member;
 - (e) the classes of shares to be issued, the conditions of redemption or repayment of shares, and the preferential and other special rights attaching to each class of shares;
 - (f) the manner in and the conditions upon which advances upon the security of a mortgage or cession are to be made and repaid, and the conditions upon which a borrower shall be entitled to repay the amount owing by him before the expiry of the period for which the advance was made;
 - (g) the conditions upon which the society will accept and repay deposits;
 - (h) the fees, fines and charges that may be demanded from or imposed upon shareholders, depositors and borrowers;
 - (i) the manner of appointment of an auditor of the society;
 - (j) the manner in which profits or losses are to be ascertained and dealt with or provided for;
 - (k) the manner of altering and rescinding the rules of the society and of making additional rules;
 - (l) the manner of electing, appointing, removing and fixing the remuneration of directors, their qualifications, powers and duties, and the manner of appointment, removing and fixing the remuneration of members of local boards or committees and of officers of the society;
 - (m) the manner of calling annual general meetings 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) such other matters as may be prescribed from time to time.
- (2) The registered rules and any registered amendments thereto as hereinafter provided shall be binding on such society and members and officers thereof, and on all persons claiming under the rules or whose claim is derived from a member.

8. Alteration of rules

- (1) A building society may, in the manner directed by its rules, alter or rescind any rule, or make any additional rule, but no such alteration, rescission or addition shall be valid if it—
- (a) purports to affect the right of a creditor of a building society who is not a member thereof; or
 - (b) is directed against any particular individual; or
 - (c) purports to alter the rights of members in a winding up.
- (2) Two copies of every resolution for the alteration or rescission of any rule or the making of any additional rule shall be signed by two directors and the secretary of the society, and shall be transmitted by the secretary of the society to the Registrar, who, if he is satisfied that such alteration, rescission or addition is in conformity with this Act, shall register the resolution and return one of the copies to the secretary of the society, with the date of registration endorsed thereon, and as from the date of registration the alteration, rescission or addition, as the case may be, shall take effect.

9. Rules open to public

- (1) Every building society shall make a copy of its rules available for inspection by members of the public during the normal business hours of the society.
- (2) Any building society which contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred Emalangeni.

10. Registration of building societies

- (1) The persons intending to establish a building society shall lodge with the Registrar the rules agreed upon by them for the government of the society and signed by them, together with such particulars relating to the signatories thereto as the Registrar may require.
- (2) The Registrar shall, after consideration of such rules and particulars and such further information and arguments as may be submitted to him by such persons, determine whether according to its rules, the society to be established is or is not a building society.
- (3) If it be determined in terms of subsection (2) that the society to be established is not a building society, the Registrar shall inform such persons accordingly:

Provided that—

- (a) the decision of the Registrar under the subsection shall be subject to an appeal to the Minister, if such appeal be made within one month after the decision of the Registrar has been announced; and
 - (b) the decision of the Minister on any such appeal shall be subject to an appeal to the Court, if such appeal be noted within three months after the decision of the Minister has been announced.
- (4) If it be determined in terms of subsection (2) that the society to be established is a building society, the Registrar if he finds that the rules are in conformity with this Act, and if he is satisfied that the rules are financially sound and that the methods of transacting the business of the society as laid down are not undesirable, shall recommend to the Minister that permission be granted to register the society as a building society.
 - (5) On receipt of a recommendation from the Registrar under subsection (4) and after consideration of all such matters as he may consider relevant, the Minister may in his discretion direct the Registrar to register the society as a building society.
 - (6) The decision of the Minister under this subsection shall be final, and shall forthwith be communicated to all persons interested therein.
 - (7) On receipt of a direction by the Minister under subsection (5), the Registrar shall, upon payment to him of the prescribed fee, register the society under this Act as a building society and record his approval of the rules, and shall endorse on a copy of the rules presented to him for that purpose the date of registration of the society, and shall issue a certificate of registration.

11. Registrar may inspect books and accounts of any association

The Registrar may at any time make an inspection or cause an inspection to be made of the books, accounts and records of any association of persons for the purpose of determining whether the association is a building society or not.

12. Effect of registration

- (1) From the date of registration of a building society under this Act such society shall be a body corporate which shall be capable of suing and of being sued in its registered name and subject to this Act, of doing all such acts as a body corporate may by law perform.

- (2) Whenever a society which is registered under a law relating to companies is registered under this Act, the Registrar shall notify the Registrar of companies in writing of such registration, and the Registrar of companies shall thereupon strike the name of the society off the register of companies.

13. Conclusiveness of certificate of registration

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

14. Cancellation or suspension of registration

- (1) Where the Registrar has reasonable grounds for believing that—
 - (a) a certificate of registration has been obtained for a building society by fraud or mistake;
 - (b) a building society exists for an illegal purpose;
 - (c) a building society has wilfully and after notice from the Registrar exceeded its powers or contravened this Act; or
 - (d) a society has ceased to conduct business as a building society;he may, with the approval of the Minister, apply to the Court for an order for the cancellation or suspension of the registration of the society.
- (2) The Registrar shall, before making any such application, give the society not less than two months' notice in writing of his intention to make the application, specifying briefly the grounds of the proposed application.
- (3) The Court may order the cancellation of the registration of the society or order the suspension of such registration for such period as it thinks fit, and may attach to any order such conditions as it thinks desirable, or may make any other order which in the circumstances it thinks desirable.
- (4) The Registrar shall forthwith give effect to any order for cancellation or suspension of registration.
- (5) Unless the Court otherwise orders, the costs in connection with the application shall be paid by the society and shall be first charge upon the assets of the society.
- (6) The Registrar shall cancel the registration of a building society if the society by resolution, passed at a special general meeting convened for the purpose, resolves that the registration of the society be cancelled:

Provided that such resolution is passed by a majority of the members voting in accordance with the rules of the society; and

Provided further that where the members voting in favour of such resolution do not hold more than one half of the value of shares of the society, as shown in its books, the resolution shall not become effective until the concurrence in writing is obtained of other members whose shares together with the shares of the members who voted in favour of the said resolution exceed in value one half of the total value of shares of the society, as shown in its books.
- (7) The Registrar shall, as soon as practicable after any cancellation or suspension under subsection (3) or (6), cause notice thereof to be published in the *Gazette* and in a newspaper circulating in Swaziland.
- (8) Any cancellation or suspension of registration shall be without prejudice to any right acquired by any person against the society before the publication of the notice referred to in subsection (7).

15. Name of building society

- (1) No society shall be registered by a name which is identical with that of a registered building society or which so nearly resembles such name as to be calculated to deceive unless the registered society is in liquidation and consents to the registration.
- (2) The Registrar may refuse to register a society by a name which in his opinion is calculated to mislead the public or to cause offence to any person or class of persons or is suggestive of blasphemy or indecency, and shall so refuse, if, in his opinion the name imports or suggests that the society enjoys the patronage of His Majesty the King or of the Government or any department thereof.

16. Change of name of building society

- (1) A building society may change its name by resolution passed at a special general meeting called for the purpose:

Provided that such resolution shall be passed by a majority of the members voting in accordance with the rules; and

Provided further that where the members voting in favour of such resolution do not hold more than one half of the value of shares of the society as shown in its books, the resolution shall not become effective until the concurrence in writing is obtained of other members whose shares together with the shares of the members who voted in favour of the said resolution exceed in value one half of the total nominal or face value of the shares of the society as shown in its books.

- (2) Subject to [section 15](#), the Registrar shall, upon receipt of notice of such change of name, enter the new name in his records in place of the former name and shall issue a certificate of registration to the society under its new name.
- (3) The change of name shall not affect any right or obligation of the society or of any member thereof, or other person concerned, or render defective any legal proceedings by or against the society and any legal proceedings that may have been commenced or continued by or against it under its former name may be continued under its new name.
- (4) The Registrar of deeds shall upon production to him by the society of any mortgage bond or of the title deeds of any immovable property belonging to the society 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 offices, make such endorsements upon such bond or title deeds and such alterations in his registers as are necessary by reason of the change of name.

Part III – Powers of building societies, deposits, shares, advances and financial provisions with respect to building societies

17. Powers of building societies

- (1) Subject to this Act a building society may—
 - (a) acquire or retain the ownership of land or the lease of land and erect buildings thereon primarily required for the administration of the society's affairs, and from time to time alienate such land or terminate or cede such lease and acquire or hire other or further land for like purposes, and let 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:

Provided that the total value of land acquired and buildings erected shall not, without the consent in writing of the Registrar, exceed an amount equal to ten *per centum* of the total assets as stated in the most recent report submitted to the Registrar in the prescribed form.

[Amended A.16/1992]

- (b) buy in immovable property mortgaged to the society or acquire leases of land ceded to the society in security for debt and deal with such property in accordance with the rules of a building society and, with the prior consent of the Registrar, develop or otherwise improve such property for sale by the building society to any person;

[Amended K.O-I-C. 2/2004]

- (c) receive savings deposits;
- (d) receive fixed deposits;
- (e) borrow money at interest other than in the form of deposits, from a bank, or if the terms are approved in writing by the Registrar from any person other than a banker, and arrange overdraft facilities with a bank approved by the Registrar;
- (f) from time to time issue shares of such classes and denominations, with or without accumulating dividends, and with such preferential rights regarding dividends and capital, and subject to such conditions of transfer and repayment as may be decided by the society in accordance with its rules;
- (g) hold cash and place money on deposit with any bank licensed under the Financial Institutions Consolidation Order, 1975, or invest money with any other institution approved by the Registrar;

[Amended A.7/1980; K.O-I-C. 2/2004]

- (h) lend or advance money at interest to members and others on the security of mortgages or cessions, and 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;

[Amended K.O-I-C. 12/1974]

- (i) lend money to—
 - (i) members on the security of their shares and to any other person on the security of their term deposits; or
 - (ii) members or to any other person on the security of employer guarantees and sureties, other guarantees and sureties approved the Registrar, term deposits placed with banks, pensions and provident funds;

[Amended K.O-I-C. 2/2004]

- (j) invest in such bills, bonds, equities, certificates, debentures, shares, stock or municipal loans, or any other instruments approved by the Registrar;

[Amended A.7/1980; K.O-I-C. 2/2004]

- (k) act as an insurance agent;

[Amended K.O-I-C. 2/2004]

- (l) pay pensions or gratuities to its employees, or establish a pension fund or such other fund as may be appropriate or adopt a pension scheme or such other scheme as may be appropriate for providing pensions or gratuities for its employees, or join with other societies or organizations in establishing or adopting any such fund or scheme;

[Amended K.O-I-C. 2/2004]

- (m) receive money from the public for deposit into call accounts or such other accounts as may be determined by the society;
[Added A.16/1992; amended K.O-I-C. 2/2004]
 - (n) enter into any contract whereby, in return for one or more sums of money paid to the society, the society agrees to pay a sum of money at a future date or a series of sums of money at future dates, and issues a certificate to the depositor which entitles the holder to receive such sums of money;
[Added A.16/1992]
 - (o) operate a transmission account;
[Added A.16/1992]
 - (p) do all lawful things incidental or conducive to the powers conferred upon it in terms of this section; and
[Amended A.16/1992]
 - (q) undertake such other business as may be prescribed.
[Amended A.16/1992]
- (2) A building society shall not undertake any business other than that authorised by this section.
[Amended A.16/1992]

18. Minors and married women may be members of building society

Unless otherwise provided by the rules of the society, a minor over the age of sixteen years or a married woman whether under marital power or not may be a member or depositor of any building society and may without assistance execute all necessary documents, give all necessary acquittances and enjoy all the privileges (except that a minor shall not hold office) and be liable to all the obligations attaching to members or depositors.

19. Conditions in regard to savings deposits and fixed deposits

- (1) No building society shall—
- (a) accept any deposit except as a savings deposit, fixed deposit, call deposit or other deposit as referred to in [section 17\(1\)\(n\)](#) and (o);
[Amended A.16/1992]
 - (b) *[Repealed A.16/1992]*
 - (c) allow any savings deposit to be withdrawn except after due notice given in accordance with its rules;
[Amended A.16/1992]
 - (d) allow any deposit to be withdrawn by cheque, draft or order payable on demand; or
[Amended A.16/1992]
 - (e) allow a notice of withdrawal of a savings deposit to run concurrently with a notice of withdrawal which was previously given.
[Amended A.7/1980]
- (2) The directors in their discretion may authorise the withdrawal of a fixed deposit before its due date.
[Added A.16/1992]

20. Maximum savings deposit or fixed deposit by individual (First Schedule)

[Repealed A.16/1992]

21. Saving in the case of deposits by a trustee

Notwithstanding [section 20](#) a building society may accept deposits from a trustee for different trusts which exceed in the aggregate the limits specified in that section if the amount deposited in respect of each individual trust does not exceed such limits.

22. Conditions relating to shares

No building society shall—

- (a) issue any shares other than permanent shares, fixed-period shares or subscription shares;
- (b) issue any permanent share or fixed-period share unless it is paid for in full when the application for such share is accepted;
- (c) issue any share at a value other than its nominal or face value; or
- (d) pay dividends on shares except out of profits.

[Amended A.7/1980]

23. Maximum shareholding by individual

No building society shall, except with the written consent of the Registrar and subject to such conditions as he may determine, allow any one person to hold fixed-period or subscription shares in excess of forty-nine *per centum* of the total value of such shares.

[Amended A.16/1992]

24. Building society may redeem share in certain circumstances

Notwithstanding this Act a building society may redeem any share—

- (a) at any time if the owner and the society agree to the redemption; or
- (b) in the event of the death or insolvency of the holder thereof if the executor or trustee, as the case may be, consents thereto.

25. Advances must be reducible or fixed-term advances

- (1) No building society shall, on the security of a mortgage or cession, make any advance other than a reducible advance or a fixed-term advance.
- (2) The terms of a reducible advance shall provide for the annual reduction of the capital amount outstanding and for the repayment of the total capital amount within a period of not more than thirty years.
- (3) If any portion of the capital amount advanced has been repaid to the society and the society has re-advanced an amount equal to the portion so repaid, the capital amount of the original advance still outstanding and the amount so re-advanced shall be repaid within a period of not more than thirty years calculated from the date of the original advance.
- (4) The terms of a fixed-term advance shall provide that the capital amount advanced shall be due for repayment within a period of not more than thirty years.

[Amended A.16/1992]

- (5) The aggregate amount of fixed-term advances shall at no time exceed fifty per cent of the total amount of all advances made by a society on the security of mortgages and cessions.

[Amended A.16/1992]

26. Limit as to amount of advance

- (1) Subject to subsection (2), no building society shall make an advance on the security of a mortgage or cession in excess of one hundred *per centum* of the value of the property mortgaged or the lease ceded as determined at the time of making the advance.

[Amended A.16/1992]

- (2) A building society may in conjunction with an advance made on the security of a mortgage or cession, make an additional advance against collateral security on such terms and conditions as may be determined by the society.

[Amended K.O-I-C. 2/2004]

27. The Minister may guarantee repayment of advances

- (1) The Minister may, on such terms and conditions as he may determine, guarantee the repayment of advances made by a building society on the security of a mortgage or cession.
- (2) Any guarantee given in terms of this section shall be deemed to be collateral security for the purposes of [section 26\(2\)](#).

28. Limit as to amount of advance when the Minister has guaranteed repayment

The total amount of any advance and of any additional advance of which the Minister has guaranteed repayment in terms of [section 27](#) shall not exceed in any individual case ninety per cent of the value of the property mortgaged or the lease ceded as determined at the time of making the advance.

29. Methods of calculating interest must be stated in advertisement relating to advances

[Repealed A.7/1980]

30. Advance on property already mortgaged

- (1) No building society shall advance money on the security of immovable property which is subject to an existing mortgage bond unless—
- (a) the existing mortgage bond is in favour of the society, or
 - (b) with the consent of the holder of the existing bond, the mortgage bond to be registered in favour of the society ranks in *pari passu* with the existing bond.
- (2) A building society may with the consent of the holder of an existing mortgage bond advance money on the security of immovable property which is subject to an existing mortgage bond:

Provided that the total amounts of the bonds do not exceed one hundred percent of the value of the mortgaged property.

[Amended A.16/1992; replaced K.O-I-C. 2/2004]

31. Building society may make further advances for certain purposes

Notwithstanding sections [26](#) and [28](#) a building society may for the purpose of protecting immovable property mortgaged or a lease ceded to it or for the purpose of maintaining its security for the repayment of an advance, make further advances in respect of—

- (a) premiums on insurance policies designed to provide further security for the repayment of an advance;
- (b) rates and taxes in respect of the said immovable property;
- (c) the maintenance and repair of the said immovable property; and
- (d) the installation of sewerage on the said immovable property.

32. Limitation of sums to be advanced to borrowers

[Amended K.O-I-C. 12/1974; A.7/1980; Repealed A.16/1992]

33. Valuation of property for purposes of advance

- (1) No building society shall make any advance unless it is based upon a valuation made in accordance with subsections (2), (3) and (4) by a valuator, appointed by the society for the purpose.
- (2) Every valuator shall make a personal inspection of the immovable property concerned.

[Amended K.O-I-C. 2/2004]

- (3) Every valuator shall record his valuation and the date of his inspection on a prescribed form and shall sign such form.
- (4) In the case of immovable property which is 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 hundred Emalangeni unless the board of directors of the society resolves that in its opinion on the information furnished to it a stipulated valuation in excess of such purchase price is reasonably justified.

34. Valuator must have no pecuniary interest in advance

- (1) No building society shall appoint as a valuator, in terms of [section 33\(1\)](#), any person who has any direct or indirect pecuniary interest other than the payment of fees for professional or legal services in the granting of an advance.
- (2) No person shall make any valuation for the purposes of [section 33\(1\)](#) if he has any direct or indirect pecuniary interest in the granting of an advance other than the payment of fees for professional or legal services, or if he is related within the third degree of consanguinity or affinity to any person having such interest in the granting of an advance.
- (3) Any building society or person contravening this section shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni.

35. Duty of director, etc. to disclose interest in advance

- (1) Every director, local director or member of a local committee of a building society who has any direct or indirect pecuniary interest in the granting of an advance shall declare the nature and extent of such 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.

- (2) No such director, local director or committee member shall take part in the discussion at such meeting or exercise his vote thereon.
- (3) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni.

36. Building society may recover certain amounts in addition to amounts entitled to under mortgage or cession

A building society may obtain judgment for and recover any amount disbursed by it on behalf of any person to whom it has made an advance on the security of a mortgage or cession in respect of—

- (i) premiums on insurance policies designed to provide further security for the repayment of the advance;
[Amended K.O-I-C. 2/2004]
- (ii) rates, taxes and fees in respect of the immovable property which has been mortgaged or the lease of which has been ceded;
- (iii) the maintenance and repair of the said immovable property;
- (iv) the installation of sewerage on the said immovable property; and
- (v) any other amounts it may have disbursed, utilized or otherwise spent in connection with the property,

[Amended K.O-I-C. 2/2004]

in addition to the amounts which it would be entitled to obtain judgment for and recover under such mortgage or cession.

37. Registrar may examine building society books

- (1) The Registrar may at any time call for any documents and any other information relating to advances made by a building society and at any time, personally or through a person designated by him, examine any books or documents relating to the advances made by a building society.
- (2) [Section 58](#) shall apply *mutatis mutandis* in regard to any such examination.

38. Non-compliance with Act does not invalidate advance

No advance or loan made by a building society shall be invalidated by reason only of the fact that the society or any officer thereof has, in connection with such advance or loan, contravened or failed to comply with this Act.

39. Establishment of statutory reserve fund

- (1) Every building society shall establish a fund to be known as the statutory reserve fund.
- (2) Subject to subsection (3) a building society shall at the end of each financial year pay into the statutory reserve fund an amount which shall not be less than ten per cent of its ascertained net profits.
- (3) If and so long as the amount standing to the credit of the statutory reserve fund is equal to or more than ten per cent of the sum of the society's total liabilities to depositors and in respect of loans and overdrafts received and the paid-up share capital of the society, it shall not be obliged to make the payment referred to in subsection (2).
- (4) No dividend bonus or donation shall be paid out of the statutory reserve fund.

- (5) Moneys standing to the credit of the statutory reserve fund shall be invested in appropriate investments or any loans or advances to members or others in terms of [section 17\(1\)\(h\)](#) and [section 17\(1\)\(i\)](#) of this Act.

[Replaced K.O-I-C. 2/2004]

- (6) A building society may charge against the statutory reserve fund any net loss remaining to the society in any year after applying to such loss any undistributed profits brought forward from previous years.
- (7) For the purposes of this section, “net profit” and “net loss” shall be construed as the profit or loss, as the case may be, of a building society after deduction of expenses and of all dividends on the shares of the society during the financial year to which such profit or loss relates.

[Added A.7/1980]

40. Restriction on pledging of investments and mortgages

- (1) A building society shall not pledge any approved investment as security for a loan or overdraft unless it holds in cash or on authorised deposit or in approved investments sufficient assets, excluding the investment so pledged, to enable it to comply with the requirements of [section 42](#).
- (2) A building society shall not pledge any mortgage as security for a loan or overdraft unless it holds sufficient unencumbered assets in cash, or on authorised deposit, or in approved investments, or in mortgages to cover the total amount of its liabilities as set out in [section 42\(1\)](#) including any amount received on the security of such pledge.

41. Restriction on borrowing

- (1) Subject to this section, a building society shall manage its affairs in such a way that the sum of its permanent share capital and that portion of its fixed-period share capital which consists of shares which are not due for redemption within the ensuing three years and the amount of its statutory funds does not at anytime amount to less than an amount which represents a prescribed percentage of the sum of amounts calculated by multiplying all balance sheet and off-balance sheet amounts by risk weights expressed as percentages.

[Amended A.16/1992]

- (1bis) The Registrar may from time to time by notice in the *Gazette* prescribe both the risk weights and the percentage capital ratio requirement.

[Added A.16/1992]

- (2) For the purposes of subsection (1)(b) the amount of the paid-up 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:

Provided that in any case where an advance made by the society is secured by a mortgage or by a cession in addition to a pledge of shares in the society, the amount of the paid-up share capital shall be deemed to be reduced only by the amount by which the advance exceeds ninety-five per cent of the value of the property which is mortgaged or of the lease which is ceded, as the case may be.

[Amended K.O-I-C. 2/2004]

- (3) Of the paid-up share capital taken into account for the purposes of subsection (1)(b) not less than three quarters shall consist of permanent share capital and that portion of the fixed-period share capital which consists of shares which are not due for redemption within the ensuing three years.

[(Amended A.10/1970.)]

42. Building society must hold certain amount daily as security for repayments

- (1) Subject to the provisions of this section, every building society shall, after making provision to meet its liabilities other than those mentioned in this section, hold from day to day an amount in cash or on authorised deposit or in approved investments as security for the prompt repayment of fixed-period and subscription shares and of deposits, loans and overdrafts and for the payment of interest accrued thereon.

- (2) Such amount shall not be less than the sum of the following amounts—

- (a) an amount equal to thirty per cent of the aggregate amount of its liabilities in respect of—

- (i) unsecured bank loans and overdrafts;
- (ii) other loans to the extent to which the lenders may demand repayment within a period of one year;
- (iii) interest accrued on all loans and deposits;

[Amended A.7/1980]

- (b) an amount equal to twelve per cent of the aggregate amount of its liabilities in respect of—

[Amended A.7/1980]

- (i) fixed deposits;
- (ii) subscription shares issued for a period of not more than five years and fixed-period shares, which are due for redemption within the ensuing three years;
- (iii) loans to the extent to which lenders may demand repayment within a period of five years but excluding any amount which has been taken into account in computing its liabilities in respect of such loans in accordance with paragraph (a):

Provided that where deposits or fixed-period shares have been pledged to the society as security for advances made by the society, the liabilities of the society as calculated for the purposes of this paragraph shall be reduced by the amount of the deposits or fixed-period shares which at any time remain pledged to the society;

- (c) an amount equal to ten per cent of the aggregate amount of its liabilities in respect of—

- (i) savings deposits;

[Amended A.7/1980]

- (ii) loans other than any specified in paragraphs (a) and (b) and repayable after a period of five years:

Provided that where shares have been pledged against advances made by the society, the liabilities of the society as calculated for the purposes of this paragraph shall be reduced by the value of the shares which at any time remain pledged to the society; and

- (d) an amount equal to twenty per cent of the aggregate amount of its liabilities in respect of advances which the society has undertaken to make but which have not yet been made.

[Amended A.7/1980]

- (3) For the purposes of this section an approved investment shall be valued at the cost thereof to the society or the market value thereof, whichever is the lower.
- (4) The amount held by a building society for the purposes of this section shall not include any moneys belonging to its statutory reserve fund.

- (5) A building society shall not pledge or otherwise encumber any moneys, deposits or investments held for the purposes of this section:

Provided that the Registrar may in special circumstances permit a society to pledge or otherwise encumber such moneys, deposits or investments to such extent, and for such period and on such terms and conditions as he may determine.

[Amended A.10/1970]

42bis. Minimum local assets

The Registrar may from time to time, by notice in the *Gazette*, prescribe that a building society shall maintain minimum local assets, that is to say assets (other than claims) situate in Swaziland and assets consisting of claims payable in Swaziland, of an amount to be determined as a percentage, not exceeding one hundred *per centum*, of the aggregate of its total capital reserves and liabilities to the public in Swaziland as stated in the most recent report submitted to the Registrar in the prescribed form:

Provided that a building society shall be afforded a reasonable period within which to comply with the requirements of such notice; and

Provided further that no such building society shall be required to augment its holdings of local assets during any calendar month by an amount in excess of ten *per centum* of the aggregate value referred to in this section.

[Added A.16/1992]

Part IV – Management and administration

43. Head office of a building society

- (1) Every registered building society shall have its head office in Swaziland or, in the case of a foreign building society registered under this Act, such society shall have a principal office in Swaziland.
- (2) Notice in writing of the situation and postal address of the head or principal office shall be lodged by the society with the Registrar when application for the registration of the society is made, and whenever any change takes place in the situation of the head or principal office a notice in writing of the change shall be lodged by the society with the Registrar within fourteen days thereof.

44. Financial year of a building society

The financial year of every building society shall end on the thirty-first day of March or such other date as may be prescribed in the rules of the society.

[Amended K.O-I-C. 2/2004]

45. Periodical statements as to financial position

Every building society shall at such intervals and in such form as may be prescribed, transmit to the Registrar a statement signed by the secretary, setting out the financial position of the society in relation to the requirements of sections [41](#) and [42](#).

[Amended A.7/1980]

46. Annual accounts

- (1) Every building society shall at the end of every financial year prepare—
 - (a) an account of all the revenue and expenditure of the society since the close of the period covered by the preceding account;

- (b) a statement of its assets and liabilities; and
- (c) such subsidiary statements as may be prescribed;

which account and statements shall include such information and shall be prepared in such form as may be prescribed.

- (2) No such account and statement shall include as an asset any sum representing expenses of organisation or extension or the purchase of business or goodwill unless provision is made for the writing off of such sum during a period not exceeding five years.
- (3) A copy of every such annual account and statement shall be sent to the Registrar within such period as the Minister may determine.

47. Building society must provide fidelity cover

- (1) Every building society shall, either by insurance with an insurance company approved for such purpose by the Registrar or by the establishment of a fund for the purpose, furnish and maintain such security as the Registrar deems adequate to make good any loss resulting from the negligence or dishonesty of any of the society's officers.
- (2) The assets of any fund established in terms of subsection (1) may be invested in deposits with the society, but shall not in any other way be merged with the assets of the society.

48. Annual and special general meetings

- (1) Every building society shall hold a general meeting designated the annual general meeting within six months after the close of every financial year which shall be held at the head or principal office of the society or at such other convenient place and at such time as may be prescribed by the rules of the society.
 - (2) The following matters shall be dealt with at the annual general meeting—
 - (a) consideration of the accounts and statements referred to in [section 46](#);
 - (b) the report of the directors;
 - (c) the report of the auditor; andthe election of directors and the financial position of the society may be considered and general business transacted.
 - (3) A special general meeting may be convened by three or more directors and shall be convened by the board of directors on the requisition of fifty members holding permanent shares or not less than one-tenth of the whole body of members holding permanent shares if the membership is less than five hundred, or of such smaller number or proportion of members holding permanent shares as the rules of the society may provide.
- [Amended A.7/1980]*
- (4) If within fourteen days after the receipt of such a requisition, a special general meeting of the society is not convened by the board of directors, it may be convened by the requisitioners or a majority of them.
 - (5) Notice of annual and special general meetings of a building society shall be given to members holding permanent shares, the Registrar and the auditor of the society in accordance with the rules, and shall specify the day, hour and place and the objects of the meeting, and if any alteration, rescission or addition to the rules is intended to be proposed, the notice shall contain every such alteration, rescission or addition.

[Amended A.7/1980]

- (6) Notice of an annual general meeting of a building society shall be given to all other members by a notice published in the *Gazette* and in any newspaper registered in the Kingdom of Swaziland at least twenty-one days before the date of such meeting.

[Added A.7/1980; Replaced K.O-I-C. 2/2004]

49. Minutes of proceedings of meetings of a building society or directors

- (1) Every building society shall cause minutes of all proceedings of general meetings and all proceedings at meetings of its directors to be entered in the English language in books kept for that purpose.
- (2) Any such minutes if purporting to be signed by the chairman of the meeting at which the proceedings took place, or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.

50. Inspection of minute books

- (1) The books or copies of the books certified by a director or the secretary containing the minutes of proceedings of any general meeting of a building society shall be kept at the registered office of the society, and shall during business hours (subject to such reasonable restrictions as the society may by its rules or in general meeting impose, so that not less than two hours in each day be allowed for inspection) be open to the inspection of any member without charge.
- (2) Any member shall be entitled to be furnished within fourteen days after he has made a request in that behalf to the society with a copy of such minutes as aforesaid certified by the secretary or a director, as correct, at a charge not exceeding twenty cents for every hundred words as may be prescribed in the rules of a building society or in the Regulations made under this Act.

[Amended K.O-I-C. 2/2004]

51. Keeping of books of account

- (1) Every building society shall cause proper books of account to be kept namely such books as are necessary to give a true and fair view of the state of the society's affairs and to explain transactions.
- (2) The books of account shall be kept at the head or principal office of the society or at such other place within Swaziland as the directors think fit, and shall at all times be open to inspection by the directors.

52. Appointments of auditors

- (1) Every building society shall at each annual general meeting appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.
- (2) The society shall notify the Registrar of the appointment within fourteen days of such meeting.
- (3) If a building society fails or refuses to make such appointment at an annual general meeting, the Registrar shall appoint an auditor of the society to hold office until the conclusion of the next annual general meeting, and fix the remuneration to be paid to him by the society for his services.
- (4) A retiring auditor shall be eligible for re-appointment and no person other than a retiring auditor shall be appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the society not less than twenty-eight days before the annual general meeting and the society shall give its members notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a registered newspaper in general circulation or by any other method allowed by the rules, not less than twenty-one days before the meeting.

[Amended K.O-I-C. 2/2004]

- (5) The first auditor of the society may be appointed by the directors and hold office until the first annual general meeting, unless previously removed by a resolution of the members in special general meeting, in which case the members at that meeting shall appoint an auditor.
- (6) The directors of a society may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.
- (7) Subject to subsection (3) the remuneration of auditors of a building society shall be fixed by the society in general meeting, but the remuneration of the first auditor or of an auditor appointed to fill any casual vacancy may be fixed by the directors.

53. Disqualification for appointment as auditor

- (1) None of the following persons shall be qualified for appointment as auditors of a building society—
 - (a) an officer or servant of the society;
 - (b) a person who is a partner of an officer or servant of the society;
 - (c) a person who is an employer or an employee of an officer or servant of the society;
 - (d) a person who by himself, or his partner or his employee, regularly performs the duties of secretary, or book-keeper to the society.

[Amended K.O-I-C. 2/2004]

- (2) Any reference in subsection (1) to an officer or servant shall not include an auditor.
- (3) Any person who is disqualified in terms of subsection (1) and who acts as auditor of a society when so disqualified shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand Emalangeni.

[Amended K.O-I-C. 2/2004]

54. Contents of auditor's report

- (1) The auditor of a building society shall make a report to the members of such society on the accounts examined by him on every balance sheet and every profit and loss account laid before the society in general meeting during his tenure of office, and the report shall contain statements as to the following matters—
 - (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;
 - (b) whether, in his opinion, proper books of account have been kept by the society, so far as appears from his examination of these books;
 - (c) whether, in his opinion, the balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;
 - (d) whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give a true and fair view, in the case of the balance sheet of the state of the society's affairs as at the end of its financial year, and in the case of the profit and loss account of the profit or loss for its financial year;
 - (e) that he has at the audit actually inspected or been given satisfactory evidence of the existence and the contents of the mortgage bonds and other securities belonging to the society;
 - (f) whether the accounts show a financial position as at the end of the financial year which is in accordance with the requirements of sections [39](#), [41](#) and [42](#).

- (2) In the event of the auditor being unable to make such report or to make it without qualification, he shall inscribe upon or attach to the balance sheet a statement of that fact or of the nature of the qualification, as the case may be, and he shall set forth therein the facts or circumstances which prevent him from making the report or from making it without qualification.
- (3) The auditor's report or any statement under subsection (2) shall, unless all the members present agree to the contrary, be read before the society in general meeting, and shall, in any event, be open to inspection by any member.

55. Auditor's right of access to books and to attend general meetings

- (1) Every auditor of a building society shall have a right of access at all times to the books, accounts, vouchers, and securities of the society, and shall be entitled to require from the officers of the society such information and explanation as he thinks necessary.
- (2) Every auditor of a building society shall be entitled to attend any general meeting of the society and to receive all notices of and other communications relating to any general meeting which any member of the society is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns him as auditor.

56. Investigation of a building society's affairs on application of members

- (1) The Registrar may on the application of fifty members of the society or of one-tenth of all the members if the membership of the society is less than five hundred appoint one or more inspectors to investigate the affairs of a building society and to report thereon in such manner as he may direct.
- (2) The application shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants have good reason for requiring the investigation, and the Registrar may, before appointing an inspector, require the applicants to give satisfactory security in an amount not exceeding five thousand Emalangeni for payment of the costs of the investigation.

[Amended K.O-I-C. 2/2004]

57. Investigation of a building society's affairs in other cases

Without prejudice to his powers under section [56](#), the Registrar may appoint one or more inspectors to investigate the affairs of a building society and to report thereon in such manner as he directs if—

- (a) after notice given by the Registrar it has for two months therefrom failed to make any return required by this Act;
- (b) after notice given by the Registrar it has for two months therefrom failed to correct or complete any such return;
- (c) the Registrar is in possession of information which in the opinion of the Minister calls for an investigation into its affairs.

58. Production of documents and evidence on investigation

- (1) All officers and agents of the building society whose affairs are investigated by virtue of section [56](#) or [57](#) shall produce to the inspector all securities, accounts, books and documents of or relating to the society which are in their custody or power and otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.
- (2) The inspector may examine the officers and agents of the society on oath in relation to its business and may administer an oath accordingly.
- (3) If any officer, auditor, member, agent or servant of the society refuses to be sworn, or to produce any such securities, accounts, books or documents, or to answer any question put to him by such

inspector relating to the affairs of the society, notwithstanding that the answer may tend to incriminate him, he shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Emalangeni.

[Amended K.O-I-C. 2/2004]

- (4) Any person who, having been sworn by any such inspector, knowingly makes any false statement in relation to any matter which is the subject of that investigation, shall be deemed to be guilty of perjury and punishable accordingly.
- (5) If an inspector thinks it necessary for the purpose of his investigation that a person other than a person whom he is empowered to examine on oath should be so examined, he may apply to a Magistrate's Court and such Court may if it sees fit order that person to attend and be examined on oath before it on any matter relevant to the investigation, and on any such examination—
 - (a) the inspector may take part therein either personally or by attorney or counsel;
 - (b) such Court may put such questions to the person examined as the Court thinks fit;
 - (c) the person examined shall answer all such questions as such Court may put or allow to be put to him, but may at his own cost employ an attorney with or without counsel who shall be at liberty to put to him such questions as such Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.
- (6) Notes of the examination shall be taken down in writing, and read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (7) Notwithstanding subsection (5)(c), such Court may allow the person examined such costs as in its discretion it may think fit, and any costs so allowed shall be paid as part of the expenses of the investigation.
- (8) In this section any reference to officers or to agents shall include past as well as present officers or agents, as the case may be, and for the purpose of this section the expression "agents" in relation to a society shall include the bankers and attorneys of the society and any persons employed by the society as auditors, whether those persons are or are not officers of the society.

59. Inspector's reports

- (1) The inspector may, and if so directed by the Registrar, shall, make interim reports to the Registrar, and on the conclusion of the investigation shall make a final report to the Registrar.
- (2) The Registrar shall—
 - (a) send a copy of a final report made by the inspector to the registered office of the building society within 30 days of the conclusion of such inspection;

[Amended K.O-I-C. 2/2004]

- (b) where the inspector is appointed under [section 56](#), he shall furnish each applicant for the investigation, on request, with a copy of the report.

[Amended K.O-I-C. 2/2004]

60. Proceedings on inspector's report

If from any report made under [section 59](#) it appears to the Registrar that any person has, in relation to the building society whose affairs have been investigated, been guilty of an offence for which he is criminally liable, he shall refer the matter to the Attorney-General.

61. Expenses of investigation of a building society's affairs

- (1) The expense of and incidental to an investigation by an inspector appointed by the Registrar under this Act shall be defrayed in the first instance by the Registrar, out of the Consolidated Fund, but the following persons shall, to the extent mentioned, be liable to repay the Registrar—
 - (a) any person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be ordered to pay the said expenses to such extent as may be specified in the order;
 - (b) unless as a result of the investigation a prosecution is instituted, the applicants for the investigation, where the inspector was appointed under [section 56](#) shall be liable to such extent, if any, as the Registrar may direct.
- (2) The report of an inspector appointed otherwise than of the Registrar's own motion may, if he thinks fit, and shall, if the Registrar so directs, include a recommendation as to the directions, if any, which he thinks appropriate, in the light of his investigation, to be given under subsection (1)(b).
- (3) Any liability to repay the Registrar imposed by subsection (1)(a) shall, subject to the satisfaction of the Registrar's rights to repayment, be a liability also to indemnify all persons against liability under subsection (1)(b), and any person liable under subsection (1)(a) or (b) shall be entitled to a contribution from any other person liable thereunder according to the amount of their respective liabilities thereunder.

62. Saving for attorneys and bankers

Nothing in this Act shall require disclosure to the Registrar or to an inspector appointed by him by—

- (a) an attorney of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) a building society's bankers as such of any information as to the affairs of any of their customers other than the society.

63. Inspector's report to be evidence

A copy of any report of an inspector appointed under this Act shall be admissible in any legal proceeding as evidence of the opinion of the inspector in relation to any matter contained in the report.

64. Directors and secretary

- (1) Every building society shall have at least two directors and a secretary.
- (2) The business of every registered building society shall be managed by a board of directors.
- (3) A director shall be elected for a period not exceeding three years, but shall be eligible for re-election.
- (4) Whenever a casual vacancy occurs, a person may be appointed by the remaining directors to fill the vacancy until the next annual general meeting, and a person elected at that meeting shall fill the vacancy for the unexpired period of office of the vacating director.
- (5) Vacancies shall be filled at the annual general meeting by election by a majority of the members voting in accordance with the rules.
- (6) The society shall within fourteen days of the appointment under subsection (4) or the election under subsection (5) 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.

65. Validity of acts of director

The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

66. Disqualification from appointment as director

- (1) The following persons shall be disqualified from being appointed a director of a building society—
 - (a) a body corporate;
 - (b) a minor or any other person under legal disability;
Provided that a woman married in community of property may be a director if her husband gives his written consent is lodged with the Registrar;
 - (c) save with the leave of the Court;
 - (i) an unrehabilitated insolvent;
 - (ii) any person who has at any time been convicted, whether in Swaziland or elsewhere, of theft, fraud, forgery, or uttering a forged document, or perjury, and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding one hundred Emalangeni;
 - (iii) any person removed by a competent Court from an office of trust on account of misconduct.
- (2) A director of any building society shall cease to hold office as such if, after the date of commencement of this Act—
 - (a) his estate is sequestrated;
 - (b) he is convicted, whether in Swaziland or elsewhere, of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding one hundred Emalangeni;
 - (c) he is removed by the Court from any office of trust on account of misconduct.
- (3) If any person who is disqualified under this section from being or continuing to be a director of any building society directly or indirectly takes part in or is concerned in the management of any such society, he shall be guilty of an offence and liable on conviction to a fine not exceeding five thousand Emalangeni or to imprisonment for a period not exceeding two years, or to both.
[Amended K.O-I-C. 2/2004]
- (4) This section shall not prevent a building society from applying under its rules any further disqualification for the appointment of, or the retention of office by, a director.

67. Amalgamation of two or more building societies

- (1) Subject to this section, two or more building societies may, with the approval of the Registrar, amalgamate and become one building society with or without liquidation of either or any of them, or a building society may transfer all its assets and liabilities to another building society.
- (2) The proposal for an amalgamation or transfer in terms of subsection (1) and the terms and conditions of such amalgamation or transfer shall require the agreement of three-fourths of the members voting in person or by proxy at general meetings convened for the purpose by each society concerned in such amalgamation or transfer.
- (3) Notice of every amalgamation or transfer and the terms thereof shall be sent to the Registrar and registered by him.

- (4) Upon the completion of the amalgamation in terms of this section the societies amalgamated shall be deemed to be dissolved, and their registration having been cancelled the Registrar shall register the new society in terms of this Act.
- (5) Upon completion of the transfer of the assets and liabilities of one society to another society, the former society shall be deemed to be dissolved and its registration shall be cancelled.
- (6) The liquidator of a building society which is being wound up in terms of [section 69](#) or the judicial manager of a building society may subject to this section, transfer all the assets and liabilities of the society being wound up or under judicial management to another building society.
- (7) Any alteration or endorsement upon bonds or title deeds held in the deeds office and any alteration in the deeds register, which is necessary by reason of such amalgamation or transfer, shall be exempted from transfer or stamp duties or registration fees or charges.
- (8) The amalgamation of building societies or the transfer of assets and liabilities in terms of this section shall not affect the rights of the creditors of either or any of the societies concerned.

68. Modes of winding up

- (1) The winding up of a building society may be by the Court, or voluntary.
- (2) The provisions of the law for the time being in force in regard to the winding up of a company shall *mutatis mutandis* apply to the winding up of a building society, subject to such adaptations or modifications as may be prescribed.

69. Liability of members

In the event of a building society being wound up—

- (a) the liability of any member in respect of any subscription share shall be limited by the amount of any periodical contributions which are in arrears on each share at the commencement of such winding up;
- (b) no member shall be entitled to claim repayment of any amount actually paid on such share unless the claims of all creditors of the society have been paid in full;
- (c) a member shall be liable to repay any advance he has received from the society.

70. Liability of borrowers

When a building society is being wound up, no member or other person to whom an advance has been made under any mortgage or other security or under the rules of the society shall be liable to pay the amount payable under such mortgage, security or rules, except at the time or times and subject to the conditions under which the advance was made.

71. Judicial management of building society

- (1) Whenever application is made to the Court for the liquidation of any building society on the ground that such society is unable to pay its debts, or that, by reason of its mismanagement or of its probable inability to meet its obligations or become a successful concern or for some other cause, it is just and equitable that the society shall be wound up, and the Court, upon consideration of the facts, is of opinion that, notwithstanding any present inability of the society to meet its obligation or the existence of any other fact or circumstance alleged in the application, there is a reasonable probability that if the society is placed under judicial management as provided in this section it will be enabled to meet such obligations and to remove the occasion for liquidation or dissolution, and that it is otherwise just and equitable that the grant of an order of liquidation should be postponed, the Court may, instead of granting a liquidation order, grant a judicial management order, to be of force, either for a period stated in the order or for an indefinite period.

- (2) A judicial management order may also be granted by the Court in respect of any building society on the application of any member or creditor, if it appears to the Court that, by reason of mismanagement or any other cause, it is desirable that the society should be placed under judicial management.
- (3) Any law providing for the judicial management of a company, shall *mutatis mutandis* apply to the judicial management of a building society subject to such adaptations or modifications as may be prescribed.

Part V – Foreign building societies

72. Registration of foreign building societies

- (1) A building society incorporated outside Swaziland may apply for registration under this Act if its rules—
 - (a) provide for the matters which in the case of building societies to be incorporated in Swaziland, are required by [section 7](#);
 - (b) contain no provision incompatible with this Act; and
 - (c) expressly authorise it to carry on business in Swaziland or generally outside the country in which it is incorporated.
- (2) Every such application by a building society incorporated outside Swaziland shall be in the prescribed form and shall be accompanied by—
 - (a) a copy of its rules and a copy of the certificate of incorporation, each certified in such manner as may be prescribed, and if they are not in the English language, certified translations thereof;
 - (b) a statement of the situation and postal address of its principal office in the country of its incorporation;
 - (c) a statement of the situation and postal address of its principal office in Swaziland;
 - (d) a copy of its latest annual statement and account;
 - (e) a statement of the name and address of its principal officer in Swaziland and the names and addresses of the directors and members of any local boards or committees.
- (3) The Registrar may in his discretion allow or refuse an application under subsection (1):

Provided that any society aggrieved by the refusal of the Registrar to register a building society under subsection (1) may within one month or such extended period as the Minister may allow from the date of such refusal appeal against that refusal to the Minister whose decision shall be final.
- (4) Where an application under this section is allowed the Registrar shall register the society as a building society incorporated outside Swaziland and shall issue the society with a certificate of registration.

73. Provisions of this Act to apply

- (1) The provisions of this Act relating to building societies incorporated in Swaziland shall apply to building societies registered under [section 72](#) in so far as that portion of their business carried on in Swaziland is concerned.
- (2) Every such society shall lodge a notice in writing with the Registrar advising him of any change in the name and address of its principal officer in Swaziland and of the names and addresses of the directors and members of any local board or committee within fourteen days of such change.

Part VI – General

74. Lost or destroyed share passbooks, etc.

If any share passbook, savings passbook, fixed deposit receipt or such other document as may have been issued by a building society is lost or destroyed, the society may, upon the application by the holder thereof, in such form as may be prescribed by the society issue a duplicate thereof which shall take the place of the original and shall constitute the sole copy thereof.

[Replaced K.O-I-C. 2/2004]

75. Exemptions from stamp and other duty

No stamp duty or other duties whatever shall be payable in respect of the following documents or payments—

- (a) a building society's fixed deposit receipts;
- (b) repayments of any advance made by a building society;
[Amended K.O-I-C. 2/2004]
- (c) deposits for credit of any account held with a building society;
[Amended K.O-I-C. 2/2004]
- (d) withdrawals from any account held with a building society;
[Amended K.O-I-C. 2/2004]
- (e) paid-up share certificates issued by a building society;
- (f) payments of periodical contributions for subscription shares.

76. Inspection of documents by public

On payment of the prescribed fees, any person may at the office of the Registrar, inspect the documents relating to any building society which are required to be lodged with the Registrar in terms of this Act or obtain from the Registrar a certificate of the registration of any such society or a copy or extract of any such document kept by him.

77. Default in rendering accounts and furnishing information

- (1) Any society or any association of persons referred to in [section 11](#) which fails to—
 - (a) render to the Registrar within the period fixed by or under this Act any account or statement or other document required by this Act to be rendered by it to him; or
 - (b) amend or complete any document referred to in paragraph (a) when required by the Registrar to do so; or
 - (c) on demand by the Registrar, furnish him with any information required by him for the purpose of this Act; or
 - (d) afford the Registrar or any person deputed by him all facilities for the making of any investigation which the Registrar is by this Act authorised to make;
- shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred Emalangeni.

- (2) No prosecution shall be instituted for any contravention of subsection (1)(a), (b) and (c), unless the Registrar has in writing notified the society or association of the default and required it to comply with the provisions of the said subsection within a specified time not being less than two weeks after the despatch by the Registrar of such notification, and it has failed within the time so specified to comply therewith.
- (3) Any society or any association of persons referred to in [section 11](#) which contravenes subsection (1)(a) shall, in addition to any other penalty which may be imposed, be liable to pay a civil penalty of twenty Emalangeni for every day during which the contravention continues, and the Registrar may, by action in any Court of competent jurisdiction, recover from it, such civil penalty or portion thereof as he, in his discretion, considers the circumstances justify him in claiming.
- (4) All penalties recovered under subsection (3) shall be paid into the Consolidated Fund.

78. Acceptance of benefits prohibited

- (1) No officer or auditor of a building society shall receive any benefit whatever for or in connection with any advance or loan made by such society.
- (2) No person shall offer or give to any officer or auditor of a building society any benefit whatever for or in connection with any advance or loan made by such society.
- (3) No officer or auditor of a building society shall purchase or have any direct or indirect pecuniary interest 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 public sale duly advertised or unless the sale is approved by the Registrar.
- (4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable on conviction to fine not exceeding twenty thousand Emalangeni or to imprisonment for a term not exceeding six months or both, and the Court before which any such person is convicted may, in addition, order such convicted person to pay the society the amount or value of the benefit received, and any such order may be enforced as if it were an order of the Court in civil proceedings.

[Amended K.O-I-C. 2/2004]

79. False statements

Any person who makes any false statement or orders or allows any false statement to be made in any document which is required by this Act to be sent to the Registrar or which such person expects will be published, knowing such statement to be false, or by addition, alteration, erasure or omission, falsifies any such document, knowing that the addition, alteration, erasure or omission will cause a falsification of the document, shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand Emalangeni, or to imprisonment for a period not exceeding six months or both.

[Amended K.O-I-C. 2/2004]

80. Default in complying with financial provisions

- (1) If a building society at any time fails to comply with [section 41](#), [42](#) or [73](#) (b) it shall notify the Registrar in writing of the fact within a period of thirty days of the end of the calendar month during which the failure first occurred.
- [Amended A.16/1992]*
- (2) If the Registrar is satisfied that such failure 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 directors of the society, impose upon it a penalty not exceeding one-tenth of one percent of the aggregate of the deficiencies or excesses that existed on every day that it was in default.

- (3) The Registrar shall direct the society to take such steps as will, within a period fixed by him, correct the deficiency or excess as the case may be, and may from time to time, for good cause shown, extend the period fixed by him.
- (4) If the Registrar is satisfied that any society after receiving any such directions from him has failed to correct the deficiency or excess, as the case may be, within the period fixed by him, as extended from time to time, he may impose upon it a penalty of one-tenth of one per cent of the aggregate of the deficiencies or excesses that existed on every day after the expiry of that period as so extended.
- (5) The society shall notify the Registrar as soon as a deficiency or excess has been corrected, and shall, within a period of forty days after the deficiency or excess has been corrected, submit to him statements certified by its auditor in support of the facts.
- (6) Any penalty payable under subsection (2) or (4) may be recovered by the Registrar by action in a competent Court, from the society or from one or more of the directors in such shares as he may fix and upon recovery thereof, it shall be paid into the Consolidated Fund:

Provided that the Registrar shall not recover from any director any portion of 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 that director and that such director took all steps which he could reasonably have been expected to take to prevent the said failure.
- (7) A director from whom any amount has been recovered in terms of subsection (6) shall not be entitled to recover the whole or any portion of that amount from the society or any other director.
- (8) The Registrar may at any time call upon the board of directors of any building society for such reports or returns, or may make such inspection of the books and accounts of any such society as may be necessary to ascertain whether any such deficiency or excess exists, or to ascertain the amount of any deficiency or excess, the period during which the deficiency or excess has continued and the reasons for the deficiency or excess.
- (9) Any decision by the Registrar to impose a penalty in terms of this section shall be subject to appeal to the Minister, who shall confirm the Registrar's decision or give such other decision as in his opinion the Registrar ought to have given.

81. Evidence

Any document purporting to be certified by the Registrar to be a document deposited at his office under this Act shall, in the absence of proof to the contrary, be deemed to be such document and every document purporting to be a copy of such document similarly certified by him 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 it and the original document is proved.

82. Penalties

- (1) Any building society which contravenes section 19, 22, 23, 25, 26, 28, 30, 33(1), 39, 40, 46(1), 47(1), 48, 49(1), 50, 51 or 80(1) shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand Emalangeni.

[Amended A.16/1992]
- (2) Any building society which contravenes section 29 or 43 shall be guilty of an offence, and liable on conviction to a fine not exceeding two hundred Emalangeni.
- (3) Any officer of a society which contravenes this Act who is knowingly a party to such contravention shall be guilty of an offence and liable on conviction to the same criminal penalties as the society would be in respect of such contravention.

83. Regulations

The Minister may by notice in the *Gazette* make regulations prescribing all matters which by this Act are required to be prescribed or which are necessary or convenient for giving effect to or carrying out this Act.

First Schedule (Section 20)

[Replaced in its entirety by A.7/1980; Repealed A.16/1992]

Second Schedule

[Repealed A.16/1992]