

CHAPTER 42:03
BUILDING SOCIETIES
ARRANGEMENT OF SECTIONS

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Act 18, 2006.

An Act to provide for the control of building societies.

[Date of Commencement: 3rd May, 1961]

PART I
Preliminary (ss 1-4)

1. Short title

This Act may be cited as the Building Societies Act.

2. Interpretation

In this Act, unless inconsistent with the context-

"**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);

"**authorized 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;

"**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 30 years;

"**court**" means the High Court of Botswana 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 five years or for a longer period which may not be redeemed before the expiry of the period for which it is issued;

"**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 any 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;

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

"**mortgage**" means a mortgage of immovable property;

"**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 is not 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;

"**prescribed**" means prescribed by regulations;

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

"Registrar" means the person holding the post of Permanent Secretary, Ministry of Finance and Development Planning, and includes any officer acting as such for the time being;

"savings deposit" means-

- (a) a deposit other than a fixed deposit;
- (b) a deposit for a fixed period not exceeding 12 months;

"secretary", in relation to a society, includes any executive officer of the society acting in the capacity of secretary;

"society" means a building society as defined in section 3;

"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;
- (b) is calculated to mature at the expiry of a period of not less than three years; and
- (c) may not be redeemed before the expiry of the maturity period.

3. Application

(1) The provisions of this Act shall apply to every building society.

(2) For the purposes of this Act the expression "building society" means an association of persons-

- (a) whose name or title contains the words "building society" or;
- (b) whose principal object is raising money by issuing shares to its members and by accepting deposits or loans from its members and others, and using such money to make advances to members and others upon the security of a mortgage or cession for the purpose of enabling the persons to whom such advances are to be made to acquire immovable property or to erect and maintain buildings upon immovable property,

but does not include a terminating society, that is to say, 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 organization 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.

4. Name of terminating society

(1) No terminating society shall carry on business in Botswana 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 to a fine not exceeding P1000.

PART II

Registration of Societies and Matters Incidental thereto (ss 5-16)

5. Prohibition of unregistered society

(1) No society, association or company shall carry on business in Botswana as a building society unless it is registered in terms of this Act.

(2) Any society, association or company which contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P1000.

6. Mode of forming 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 society

- (1) The rules of every society shall provide for the following matters-
- (a) the name of the society and the situation in Botswana 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 Botswana;
 - (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 the 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 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-

- (a) it purports to affect the right of a creditor of a society who is not a member thereof;
- (b) it is directed against any particular individual; or
- (c) it 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 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 society which contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P200.

10. Registration of societies

(1) Any 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 is 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 this subsection shall be subject to an appeal to the President, if such appeal is made within one month after the decision of the Registrar has been announced; and
- (b) the decision of the President on any such appeal shall be subject to an appeal to the court, if such appeal is noted within three months after the decision of the President has been announced.

(4) If it is 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 the provisions of 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 President 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 President may in his discretion direct the Registrar to register the society as a building society.

(6) The decision of the President under subsection (5) shall be final, and shall forthwith be communicated to all persons interested therein.

(7) On receipt of a direction by the President 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 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 the provisions of its rules and of 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 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-

- (a) that a certificate of registration has been obtained for a society by fraud or mistake;
- (b) that a society exists for an illegal purpose;
- (c) that a society has wilfully and after notice from the Registrar exceeded its powers or contravened any of the provisions of this Act applicable to it; or
- (d) that a society has ceased to conduct business as a building society,

the Registrar, with the approval of the President, may 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 to the society not less than two months previous 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; and the Registrar shall forthwith give effect to any order for cancellation or suspension of registration.

(4) Unless the court otherwise orders, the costs in connection with the application shall be paid by the society and shall be a first charge upon the assets of the society.

(5) The Registrar shall cancel the registration of a society if the society by resolution, passed, by a majority of the members voting in accordance with the rules of the society, at a special general meeting convened for that purpose, resolves that the registration of the society be cancelled:

Provided that where the members so voting in favour of such resolution do not hold more than one half of the value of shares of the society, as shown in the books of the society, 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 the books of the society.

(6) The Registrar shall, as soon as practicable after any cancellation or suspension under subsection (3) or (5), cause notice thereof to be published in the *Gazette* and in a newspaper circulating in the district in which the head office is situate or, in the case of a foreign building society registered under this Act, in the district in which the principal office of the society is situate.

(7) Any cancellation or suspension of registration shall be without prejudice to any right acquired by any person against the society before the publication in the *Gazette* of the notice referred to in subsection (6).

15. Name of society

(1) No society shall be registered by a name which is identical with that of a registered 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 the President, of the Government of Botswana or of any department of such Government.

16. Change of name of society

(1) A society may change its name by resolution passed, by a majority of the members voting in accordance with the rules of the society, at a special general meeting called for that purpose:

Provided that where the members so voting in favour of such resolution do not hold more than one half of the value of shares of the society as shown in the books of the society, 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 the books of the society.

(2) Upon receipt by the Registrar of notice of such change of name, the Registrar, subject to the provisions of section 15, shall 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 commenced or continued under its new name.

(4) The Registrar of Deeds 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 registries, shall 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 Societies, Deposits, Shares, Advances and Financial Provisions with respect to Societies (ss 17-42)

17. Powers of society

(1) Subject to the provisions of this Act a society shall have the following powers-

- (a) to acquire or retain the ownership of land or the lease of land and to erect buildings thereon primarily required for the administration of the society's affairs, and from time to time to alienate such land or terminate or cede such lease and acquire or hire other or further land for like purposes, and to 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 20 per cent of its permanent share capital and the amount standing to the credit of its statutory reserve fund and general reserve fund;

- (b) to buy immovable property mortgaged to the society or acquire leases of land ceded to the society in security for debt and to hold such immovable property or leases for a period which shall not exceed five years without the authority of the Registrar;
- (c) to receive savings deposits;
- (d) to receive fixed deposits;
- (e) to 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 to arrange overdraft facilities with a bank approved by the Registrar;
- (f) from time to time to 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 re-payment as may be decided by the society in accordance with its rules;
- (g) to hold cash and to make deposits-
 - (i) with a bank approved by the Registrar; and
 - (ii) with the Botswana Savings Bank approved by the Registrar;
- (h) to lend or advance money at interest to members and others on the security of mortgages or cessions, and 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;

- (i) to lend money to members and others on the security of their deposits and to members on the security of their shares;
- (j) to invest in such bills, bonds, certificates, debentures, stock or municipal loans as may be approved by the President;
- (k) to act as the agent of insurance companies in effecting insurances in respect of property mortgaged or to be mortgaged to the society and any other insurances designed to secure a debt to the society and to collect on behalf of such companies the premiums in respect of any insurances pledged to the society;
- (l) to pay pensions or gratuities to its employees, or to establish a pension fund or to adopt a pension scheme for providing pensions or gratuities for its employees, or to join with other societies in establishing or adopting any such fund or pension scheme;
- (m) to do all lawful things incidental or conducive to the powers conferred upon it in terms of this section;
- (n) to undertake such other business as may be prescribed.

(2) A society shall not undertake any business other than that authorized by this section, and in particular shall not enter into any contract (other than a contract for the allotment of shares in terms of subsection (1)(f), or for the receipt of money on deposit or loan in terms of subsection (1)(c), (d) or (e)) 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.

18. Minors and married women may be members of society

Unless otherwise provided by the rules of the society, a minor over the age of 16 years or a married woman whether under marital power or not may be a member or depositor of any 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

No society shall-

- (a) issue any form of application to make savings deposits which does not contain a printed reference to this section;
- (b) issue any form of application to make a fixed deposit which does not contain a printed reference to this section;
- (c) accept a deposit from any person unless such person has signed a form of application to make deposits with such society;
- (d) accept any deposit except as a savings deposit or as a fixed deposit;
- (e) accept any deposit as a fixed deposit for a period which is less than 12 months or more than five years:

Provided that the directors in their discretion may authorize the withdrawal of a fixed deposit before its due date;

- (f) allow any savings deposit to be withdrawn except after due notice given in accordance with its rules;
- (g) allow any deposit to be withdrawn by cheque, draft or order payable on demand;
- (h) allow a notice of withdrawal of a savings deposit to run concurrently with a notice of withdrawal which was previously given.

20. Maximum savings deposit or fixed deposit by individual

Except with the written consent of the Registrar and subject to such conditions as he may determine, no society shall, in relation to its total assets as severally set out in the first column of the First Schedule to this Act, allow any person-

- (a) to maintain a credit balance in his savings deposit account in excess of the amount set

- out in the second column of the said Schedule; or
- (b) to hold fixed deposits which exceed in the aggregate, exclusive of interest, 12 times the amount set out in the third column of the said Schedule or which fall due for repayment in any one month in an amount which exceeds, exclusive of interest, the amount set out in the said third column.

21. Saving in the case of deposits by a trustee

Notwithstanding the provisions of section 20 a 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 society shall-

- (a) issue any prospectus relating to its shares unless such prospectus is printed in English and states-
- (i) the names of the directors of the society,
 - (ii) the classes of shares issued or to be issued by the society, the conditions of redemption or re-payment thereof and the preferential and other special rights attaching thereto; and
 - (iii) the provisions of section 69;
- (b) issue any form of application for shares unless there is firmly attached to such form a prospectus which is in accordance with the provisions of paragraph (a);
- (c) accept any person as a member unless he has signed a form of application for shares in the society;
- (d) issue any shares other than permanent shares, fixed-period shares or subscription shares;
- (e) issue any permanent share or fixed-period share unless it is paid for in full when the application for such share is accepted;
- (f) issue any share at a value other than its nominal or face value;
- (g) pay dividends on shares except out of profits which are available after provision for the statutory reserve fund has been made in accordance with the provisions of section 39.

23. Maximum shareholding by individual

No 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 the amount set out in the second column of the Second Schedule in relation to the society's total assets as severally set out in the first column of the said Schedule.

24. Society may redeem share in certain circumstances

Notwithstanding anything contained in this Act a society may redeem any share-

- (a) at any time if the owner and the society agree to the redemption;
- (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 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 30 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 30 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 five and one half years.

(5) The aggregate amount of fixed-term advances shall at no time exceed 10 per cent of the total amount of all advances made by a society on the security of mortgages and cessions.

26. Limit as to amount of advance

(1) Subject to the provisions of subsection (2), no society shall, on the security of a mortgage or cession, make an advance in excess of 75 per cent of the value of the property mortgaged or the lease ceded as determined at the time of making the advance:

Provided that in respect of property which was mortgaged to a society and which has been purchased by the society owing to the default of the debtor or which has been sold in execution or upon insolvency or under the authority of the debtor granted subsequent to his default under a registered mortgage bond, a society may make a reducible advance to a purchaser on the security of a mortgage in an amount not exceeding the amount due to the society by the previous owner at the time of sale and previously secured by the mortgage of the said property.

(2) A 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 Registrar.

27. President may guarantee repayment of advances

(1) The President may, on such terms and conditions as he may determine, guarantee the repayment of advances made by a 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 President has guaranteed repayment

The total amount of any advance and of any additional advance of which the President has guaranteed repayment in terms of section 27 shall not exceed in any individual case 90 per cent of the value of the property mortgaged or the lease ceded as determined at the time of making the advance.

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

No society shall issue any advertisement, notice or other similar document relating to its advances unless such advertisement, notice or document contains a clear statement as to whether the interest on its advances is calculated on the monthly, quarterly, half-yearly or annual balance, as the case may be.

30. Advance on property already mortgaged prohibited

No society shall advance money on the security of immovable property which is subject to an existing mortgage bond unless such existing mortgage bond is in favour of the society.

31. Society may make further advances for certain purposes

Notwithstanding the provisions of sections 26 and 28, a society may for the purpose of protecting immovable property mortgaged or a lease ceded to it 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;
- (d) the installation of sewerage on the said immovable property.

32. Limitation as to sum total of advances

(1) The sum total of all advances on each of which there is owing to the society an aggregate amount in excess of P10 000 shall at no time exceed the percentage set out in the second column of the Third Schedule in relation in each case to the total assets of the society as severally set out in the first column of that Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Third Schedule.

33. Valuation of property for purposes of advance

(1) No society shall make any advance unless it is based upon a valuation made in

accordance with the provisions of subsections (2), (3) and (4) by a person (hereinafter called a "valuator") appointed by the society for the purpose.

(2) Every valuator shall make a personal inspection of the immovable property concerned:

Provided that a valuator shall not be required to make such inspection in the case of vacant land with which he is personally acquainted.

(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 P100 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 society shall appoint as 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 other than the payment of fees for professional or legal services in the granting of an advance, or if he is related within the third degree of consanguinity or affinity to any person having such an interest in the granting of an advance.

(3) Any society which or person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P1000.

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

(1) Every director, local director or member of a local committee of a 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 any of the provisions of this section shall be guilty of an offence and liable to a fine not exceeding P1000.

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

A 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-

- (a) premiums on insurance policies designed to provide further security for the repayment of the advance;
- (b) rates, taxes and fees in respect of the immovable property which has been mortgaged or the lease of which has been ceded;
- (c) the maintenance and repair of the said immovable property; and
- (d) the installation of sewerage on the said immovable property,

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 books of society

(1) The Registrar may at any time call for any documents and any other information relating to advances made by a 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 society.

(2) The provisions of 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 society shall be invalidated by reason only of the fact that the society or any officer of the society has, in connection with such advance or loan, contravened or failed to comply with any provision of this Act.

39. Establishment of statutory reserve fund

(1) Every society shall establish a fund to be known as the statutory reserve fund.

(2) Subject to the provisions of subsection (3) a society shall at the end of each financial year pay into the statutory reserve fund an amount which shall not be less than 10 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 10 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, the society 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 approved investments or any loans or advances to members or others on the security of mortgages or cessions in terms of section 17(1)(h).

(6) A 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.

40. Restriction on pledging of investments and mortgages

(1) A society shall not pledge any approved investment as security for a loan or overdraft unless it holds in cash or on authorized 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 society shall not pledge any mortgage as security for a loan or overdraft unless it holds sufficient unencumbered assets in cash, or on authorized 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 borrowings

(1) Subject to the provisions of this section, a society shall not accept any money on deposit or borrow any money by way of loan or bank overdraft if-

- (a) the sum of its permanent share capital and the amount of its statutory reserve fund and general reserve fund is or would by so doing be less than one quarter of the sum of its liability for deposits, loans and bank overdrafts and the paid up value of its other classes of shares; or
- (b) its total paid-up share capital is or would by so doing be less than 40 per cent of the total amount of its liability for deposits, loans and overdrafts.

(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 75 per cent of the value of the property which is mortgaged or of the lease which is ceded, as the case may be.

(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.

42. Society must hold certain amount daily as security for repayments

(1) Subject to the provisions of this section, every society shall, after making provision to

meet its liabilities other than those mentioned in this section, from day to day hold an amount in cash or on authorized 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 30 per cent of the aggregate amount of its liabilities in respect of-
 - (i) savings deposits;
 - (ii) unsecured bank loans and overdrafts;
 - (iii) other loans to the extent to which the lenders may demand repayment within a period of one year;
 - (iv) interest accrued on all loans and deposits;
- (b) an amount equal to 20 per cent of the aggregate amount of its liabilities in respect of-
 - (i) fixed deposits,
 - (ii) subscription shares issued for a period of not more than five years and fixed-period shares;
 - (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 10 per cent of the aggregate amount of its liabilities in respect of-
 - (i) subscription shares issued for a period of more than five years and fixed-period shares,
 - (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;
- (d) an amount equal to 30 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.

(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 society for the purposes of this section shall not include any moneys belonging to its statutory reserve fund.

(5) A 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.

PART IV

Management and Administration (ss 43-71)

43. Head office of society

(1) Every registered society shall have its head office in Botswana or, in the case of a foreign building society registered under this Act, such society shall have a principal office in Botswana.

(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 for the change shall be lodged by the society with the Registrar within 14 days thereof.

44. Financial year of society

The financial year of every society shall end on 31st March.

45. Periodical statements as to financial position

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

46. Annual accounts

(1) Every 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 organization 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 President may determine.

47. Society must provide fidelity cover

(1) Every 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 society shall hold a general meeting within six months after the close of every financial year; and such meeting shall be designated 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 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;
- (d) the election of directors and the financial position of the society shall 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 50 members or not less than one tenth of the whole body of members if the membership is less than 500, or of such smaller number or proportion of members as the rules of the society may provide.

(4) If within 14 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 requisitionists or a majority of them.

(5) Notice of annual and special general meetings of a society shall be given to members, 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.

49. Minutes of proceedings of meetings of society or directors

(1) Every 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 were held 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 society held after the commencement of this Act 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 14 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 20 thebe for every 100 words.

51. Keeping of books of account

(1) Every society shall cause to be kept proper books of account.

(2) For the purposes of subsection (1) proper books of account shall not be deemed to be kept if there are not kept such books as are necessary to give a true and fair view of the state of the society's affairs and to explain transactions.

(3) The books of account shall be kept at the head office of the society or at such other place within Botswana as the directors think fit, and shall at all times be open to inspection by the directors.

52. Appointment of auditors

(1) Every 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 14 days of such meeting.

(3) If a 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 28 days before the annual general meeting and the society shall give its members notice of such intention at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or by any other method allowed by the rules, not less than 21 days before the meeting.

(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) The remuneration of auditors of a 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. Disqualifications for appointment as auditor

(1) None of the following persons shall be qualified for appointment as auditors of a 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 body corporate;
- (e) a person who by himself, or his partner or his employee, regularly performs the duties of secretary, or book-keeper to the society.

(2) Reference in subsection (1) to an officer or servant shall be construed as not including reference to an auditor.

(3) Any person who acts as auditor of a society when disqualified as aforesaid shall be guilty of an offence and liable to a fine not exceeding P200.

54. Contents of auditor's report

(1) The auditor shall make a report to the members on the accounts examined by him and 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 the society's balance sheets 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 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 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 society's affairs on application of members

(1) The Registrar may appoint one or more inspectors to investigate the affairs of a society and to report thereon in such manner as he may direct on the application of 50 members of the society or of one-tenth of all the members if the membership of the society is less than 500.

(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 P400 for payment of the cost of the investigation.

57. Investigation of 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 society and to report thereon in such manner as he directs if-

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

58. Production of documents and evidence on investigation

(1) It shall be the duty of all officers and agents of the society whose affairs are investigated by virtue of section 56 or 57 to 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 on oath the officers and agents of the society 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 to a fine not exceeding P200.

(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.

(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 shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him:

Provided that, notwithstanding anything contained in 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 expense of the investigation.

(7) 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 purposes of this section the

expression "agents", in relation to a society, includes 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 any report made by the inspector to the registered office of the society;
- (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,

and may cause the report to be printed and published.

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 society whose affairs have been investigated, been guilty of an offence for which he is criminally liable, he shall refer the matter to the Director of Public Prosecutions.

61. Expenses of investigation of society's affairs

(1) The expenses 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, but the following persons shall be liable to repay the Registrar-

- (a) any person who is convicted on a prosecution instituted as a result of the investigation and who in the same proceedings is ordered to pay the said expenses, to such extent as may be specified in the order;
- (b) the applicants for the investigation, where the inspector was appointed under section 56, to such extent, if any, as the Registrar may direct, unless as a result of the investigation a prosecution is instituted.

(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 investigations, to be given under subsection (1)(b).

(3) Any liability to repay the Registrar imposed by subsection (1)(a) shall, subject to 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 the said subsection (1)(a) or (b) shall be entitled to contribution from any other person liable under the same paragraph 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-

- (a) by an attorney, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by a 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 society shall have at least two directors and a secretary.

(2) The business of every registered 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 14 days of the appointment under subsection (4) or the election under subsection (5) of a director 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 directors

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

66. Disqualification for appointment as director

(1) Any of the following persons shall be disqualified from being appointed a director of a 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 and that consent is lodged with the Registrar;
- (c) except with the leave of the court, an unrehabilitated insolvent;
- (d) except with the leave of the court, any person who has at any time been convicted, whether in Botswana 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 P100;
- (e) except with the leave of the court, any person removed by a competent court from an office of trust on account of misconduct.

(2) A director of any society shall cease to hold office as such

if-

- (a) his estate is sequestrated as insolvent;
- (b) he is convicted, whether in Botswana 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 P100;
- (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 society directly or indirectly takes part in or is concerned in the management of any society, he shall be guilty of an offence and liable to a fine not exceeding P1000, or to imprisonment for a term not exceeding two years, or to both.

(4) Nothing in this section shall be deemed to prevent a 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 societies

(1) Subject to the provisions of this section, two or more societies may, with the approval of the Registrar, amalgamate and become one society with or without liquidation of either or any of them, or a society may transfer all its assets and liabilities to another 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 society which is being wound up in terms of section 68 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, subject to the provisions of this section.

(7) Any alterations or endorsements upon bonds or title deeds held in the deeds registry and any alterations in the deeds register, which are 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 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 society may be-

- (a) by the court; or
- (b) voluntary.

(2) The provisions of the Companies Act in regard to the winding up of a company shall *mutatis mutandis* apply to the winding up of a society, subject to such adaptations or modifications as may be prescribed.

69. Liability of members

In the event of a society being wound up-

- (a) the liability of any member in respect of any subscription share shall be limited to the amount of any periodical contributions which are in arrear on such 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) if any member has received any advance from the society, he shall be liable to repay such advance.

70. Liability of borrowers

When a 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 society

(1) Whenever application is made to the court for the liquidation of any 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 the opinion that, notwithstanding any present inability of the society to meet its obligations 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 or liquidation should be postponed, the court may, instead of granting a liquidation order, grant an order (hereinafter called a "judicial management order"), in terms of this section, 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 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) When a law is in force in Botswana providing for the judicial management of a

company, the provision of that law shall *mutatis mutandis* apply to the judicial management of a society subject to such adaptations or modifications as may be prescribed.

PART V

Foreign Building Societies (ss 72-73)

72. Registration of foreign building societies

(1) A building society incorporated outside Botswana the rules of which-

- (a) contain the several matters which in the case of building societies to be incorporated in Botswana, are required by section 7 to be provided for; and
- (b) expressly authorize the society to carry on business in Botswana or generally outside the country in which it is incorporated,

may apply for registration under this Act.

(2) Every application by a building society incorporated outside Botswana 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 the same are not written 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 Botswana;
- (d) a copy of its latest annual statement and account;
- (e) a statement of the name and address of its principal officer in Botswana 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 President may allow from the date of such refusal appeal against that refusal to the President 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 Botswana and shall issue the society with a certificate of registration.

(5) A building society registered in terms of this section shall not be entitled to carry on any type of business which a building society registered in terms of section 10 would not be entitled to carry on.

73. Provisions of this Act to apply

(1) The provisions of this Act relating to building societies incorporated in Botswana shall apply to a building society registered under the provisions of section 72 unless the Registrar is satisfied that the law under which such building society is incorporated is no less stringent in its requirements concerning the financial solvency and viability of the building society than the relevant provisions of this Act, in which case the provisions of this Act, with the exception of those contained in this Part and in sections 14, 19 and 69, shall not apply to such building society:

Provided that where a building society has for two months after notice failed to furnish statements of account as required by subsection (2) the Registrar may appoint one or more inspectors to investigate its affairs and the provisions of sections 58 to 63 of this Act shall apply to such building society.

(2) Every building society registered under the provisions of section 72-

- (a) shall furnish to the Registrar annually audited statements of account showing the total net amounts of funds received from depositors and shareholders in Botswana and of loans made in Botswana;
- (b) shall lodge with the Registrar notice in writing of any change in the name and address

- of its principal office in Botswana and in the names and addresses of the directors and members of any local board or committee within 14 days thereof; and
- (c) except with the prior approval of the Registrar, shall not transfer from Botswana any amount of money which exceeds the amount of any money which it may have brought into Botswana.

PART VI
General (ss 74-82)

74. Lost or destroyed share certificates, etc.

(1) If any share certificate, savings deposit pass book, subscription share pass book or fixed deposit receipt issued by a society is lost or destroyed, the society, upon such evidence and subject to such terms and conditions as the directors think fit, and after the loss of such certificate, pass book or receipt has been duly advertised once in the *Gazette* and once in a newspaper circulating in the town or district in which the member or depositor, as the case may be, resides, may issue a certified copy of such certificate, pass book or receipt:

Provided that the directors may in their discretion authorize the issue of such a certified copy without requiring the loss to be advertised.

(2) Such certified copy shall thereafter for all purposes take the place of the certificate, pass book or receipt so lost or destroyed and be the sole evidence thereof.

75. Inspection of documents by public

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

76. Default in rendering accounts and furnishing information

(1) Any society or any association of persons referred to in section 11 which fails-

- (a) to 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 the Registrar;
- (b) to amend or complete any document referred to in paragraph (a) when required by the Registrar to do so;
- (c) to furnish to the Registrar upon demand by him any information required by him for the purposes of this Act; or
- (d) to afford the Registrar or any person deputed by the Registrar all facilities for the making of any investigation which the Registrar is by this Act authorized to make,

shall be guilty of an offence and be liable to a fine not exceeding P200.

(2) No prosecution shall be instituted for any contravention of the provisions of subsection (1)(a), (b) and (c) unless the Registrar has in writing notified the society or association of the default and required the society or association to comply with the said provisions within a specified time, not being less than two weeks after the despatch by the Registrar of such notification, and the society or association has failed within the time so specified to comply with the said provisions.

(3) Any society or any association of persons referred to in section 11 which contravenes the provisions of subsection (1)(a) shall, in addition to any other penalty which may be imposed, be liable to pay a civil penalty not exceeding P20 for every day during which the contravention continues, and the Registrar may, by action in any court of competent jurisdiction, recover from such society or association of persons, as the case may be, such civil penalty or such portion thereof as he, in his discretion, considers the circumstances justify him in claiming.

(4) All penalties recovered under this subsection shall be paid into the general revenue of Botswana.

77. Acceptance of benefits prohibited

(1) No officer or auditor of a 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 society any benefit whatever for or in connection with any advance or loan made by such society.

(3) No officer or auditor of a 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 any of the provisions of subsection (1), (2) or (3) shall be guilty of an offence and liable to a fine not exceeding P200, or to imprisonment for a term not exceeding six months, or to both.

(5) The court before which any such person is convicted may, in addition, order such convicted person to pay over to 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.

78. False statements

If any person makes any false statement or orders or allows any false statements 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, he shall be guilty of an offence and liable to a fine not exceeding P200, or to imprisonment for a term not exceeding six months, or to both.

79. Default in complying with financial provisions

(1) If a society at any time fails to comply with the provisions of section 32, 41, 42 or 73(2)(c) it shall notify the Registrar in writing of the fact within a period of 30 days after the end of the calendar month during which the failure first occurred.

(2) Whenever 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 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.

(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) Whenever 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 the society a penalty of 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) The society shall notify the Registrar as soon as a deficiency or excess has been corrected, and shall, within a period of 40 days after the deficiency or excess has been corrected, submit to the Registrar statements certified by the auditor of the society in support of the facts.

(6) Every penalty payable under the provisions of subsection (2) or (4) may be recovered by the Registrar by action in any competent court, from the society or from one or more of the directors in such shares as he may fix and upon recovery shall be paid into the general revenues of Botswana:

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 that director and that such director took all such steps as 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 society for such reports or returns, or make such inspection of the books and accounts of any 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 President, who shall confirm the Registrar's decision or give such other decision as in his opinion the Registrar ought to have given.

80. Evidence

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 it and the original document is proved.

81. Penalties

(1) Any society which contravenes the provisions of section 19, 20, 22, 23, 25, 26, 28, 30, 33(1), 39, 40, 46(1), 47(1), 48, 49(1), 50, 51 or 79(1) shall be guilty of an offence and liable to a fine not exceeding P1000.

(2) Any society which contravenes the provisions of section 29 or 43 shall be guilty of an offence, and liable to a fine not exceeding P200.

(3) Any officer of a society who contravenes any of the provisions of this Act who is knowingly a party to such contravention shall be guilty of an offence and liable to the same criminal penalties as would the society in respect of such contravention.

82. Regulations

The President may, by statutory instrument, make regulations providing for any matter which under this Act is to be provided for by regulations or prescribing all matters which by this Act are required to be prescribed or which are necessary or convenient to be prescribed for giving effect to or carrying out the provisions of this Act.

FIRST SCHEDULE

(Section 20)

	Total assets of society as at the close of the last financial year	Maximum savings account credits	Maximum monthly repayments to any one person on fixed deposits
Under	P1 000 000	P1 000	P2 000
Between	P1 000 000		
and	P2 000 000	P2 000	P4 000
Between	P2 000 000		
and	P10 000 000	P4 000	P6 000
Over	P10 000 000	R6 000	P8 000

SECOND SCHEDULE

(Section 23)

	Total assets of society as at the close of the last financial year	Maximum shareholding of fixed-period or subscription shares
Under	P1 000 000	P24 000
Between	P1 000 000	
and	P2 000 000	P48 000
Between	P2 000 000	

Over	and	P10 000 000	P72 000
		P10 000 000	P96 000

THIRD SCHEDULE

(Section 32)

<i>Total assets of society as at the close of the last financial year</i>		<i>Maximum percentage of advances on each of which there is owing P10 000</i>
Not exceeding	P1 000 000	10 per cent
Not exceeding	P2 000 000	12 1/2 per cent
Not exceeding	P10 000 000	15 per cent
Not exceeding	P20 000 000	20 per cent
Exceeding	P20 000 000	25 per cent