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LAWS OF KENYA

THE BUILDING SOCIETIES ACT

CHAPTER 489

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CHAPTER 489

BUILDING SOCIETIES ACT

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CHAPTER 489**BUILDING SOCIETIES ACT**

[Date of commencement: 6th July, 1956.]

An Act of Parliament to provide for the formation and registration of building societies; and for matters incidental thereto and connected therewith

[Act No. 29 of 1956, Act No. 28 of 1959, Legal Notice 142 of 1961, Legal Notice 147 of 1961, Act No. 27 of 1961, Legal Notice 462 of 1963, Legal Notice 457 of 1963, Legal Notice 2 of 1964, Legal Notice 374 of 1964, Act No. 9 of 1967, Act No. 29 of 1967, Act No. 34 of 1967, Act No. 2 of 1977, Act No. 12 of 1984, Act No. 16 of 1985, Act No. 10 of 1986, Act No. 13 of 1987, Act No. 8 of 1991, Act No. 6 of 1994, Act No. 13 of 1995, Act No. 4 of 1999, Act No. 7 of 2001, Act No. 2 of 2002, Act No. 7 of 2002, Act No. 15 of 2008.]

PART I – PRELIMINARY**1. Short title**

This Act may be cited as the Building Societies Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"annual licence" means an annual licence issued in accordance with section 12B;

"basic advance", in relation to an advance made or to be made by a building society for the purpose of its being used in defraying the purchase price of land, means the maximum amount which the society would consider proper to advance upon the security of that land if no other security were taken by the society;

"board of directors", in relation to a building society, means the managing body thereof by whatever name called;

"building society" means a society formed for the purpose of raising by the subscription of members a stock or fund from which to make advances to members secured on land and registered in accordance with this Act;

"Central Bank" means the Central Bank of Kenya established under the Central Bank of Kenya Act (Cap. 491);

"continuing arrangement" means an arrangement made between a building society and another person whereby, in contemplation of a series of advances comprising excess advances being made by the society to members for the purpose of their being used in defraying the purchase price of land, that person undertakes to give to the society a series of guarantees, each of which is to secure sums payable to the society in respect of such an advance;

"core capital" means subscription shares which are fully paid up by members plus all disclosed reserves, less intangible assets such as goodwill or asset revaluation reserves or any other capital instruments specified by the Central Bank;

"director" means a member of a board of directors;

"dispute" means a dispute between a building society and a member, or a representative of a member in his capacity as a member of the society, unless by the rules of any society for the time being it is otherwise expressly provided; and, in the absence of such express provision, shall not apply to a dispute between

any such society and any member thereof, or other person whatever, as to the construction or effect of an instrument of mortgage or a contract contained in any document, other than the rules of the society, and shall not prevent any society, or any member thereof, or any person claiming through or under him, from obtaining in the ordinary course of law any remedy in respect of any such mortgage or other contract to which he or the society would otherwise be by law entitled;

"excess advance" means, in relation to an advance, the amount by which the advance exceeds the basic advance;

"existing society" means a society, association, partnership or company, whether incorporated or registered in or outside Kenya, which was carrying on business as a building society in Kenya immediately before the commencement of this Act;

"land" includes freehold or leasehold land and all buildings thereon, whether erected before, or during, the period for which a mortgage on the land in favour of a building society subsists;

"mortgage" includes a legal charge;

"register" means the register of building societies to be kept by the Registrar under section 7;

"Registrar" means the Registrar of Building Societies appointed under section 3, and includes a deputy registrar and an assistant registrar;

"special resolution" means a resolution passed by not less than three-fourths of the members of a building society present and entitled to vote at a general meeting of which notice specifying the intention to propose that resolution has been duly given according to the rules of the society.

[Act No. 12 of 1984, Sch., Act No. 16 of 1985, s. 3, Act No. 13 of 1987, s. 2, Act No. 4 of 1999, s. 90.]

3. Appointment of Registrar

The Cabinet Secretary shall appoint a Registrar of Building Societies to perform the duties and exercise the powers imposed and conferred by this Act, and may appoint a deputy registrar and any number of assistant registrars, who shall be subject to the directions of the Registrar.

[L.N. 374/1964.]

4. Certificates, etc., to be evidence

(1) 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.

(2) Any other document relating to a building society and purporting to be signed by the Registrar shall, in the absence of evidence to the contrary, be admissible as evidence in a court without proof of the signature.

5. Indemnity of the Registrar and other persons

The Registrar shall not, nor shall any person acting under the authority of the Registrar or under any regulation made under this Act, be personally liable for or in respect of any act or matter done in good faith in the exercise or supposed exercise of the powers conferred by this Act or by any regulation made thereunder.

PART II – FORMATION AND REGISTRATION

6. Formation of building societies

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

(2) Subject to this section, persons intending to establish a building society may apply to the Registrar for registration in the prescribed form, accompanied by two copies of the rules.

(3) If the Registrar is satisfied that the application and the rules are in compliance with the provisions of this Act and any regulations made thereunder, he shall enter the prescribed particulars relating thereto in the register.

(4) The Registrar shall issue a certificate of registration in the prescribed form to every building society registered under this section.

(5) Subject to this Act, no building society shall carry on business in Kenya unless the persons forming the building society under subsection (1) have raised, by subscription, minimum shares as follows—

- (a) by the 31st December, 2000, shares worth fifty million shillings;
- (b) by the 31st December, 2001, shares worth one hundred million shillings;
- (c) by the 31st December, 2002, shares worth one hundred and fifty million shillings.

[Act No. 13 of 1987, s. 3, Act No. 4 of 1999, s. 91.]

7. Maintenance of register

The Registrar shall keep a register of building societies in which he shall record, in respect of all building societies registered under section 6 or section 75, the following particulars—

- (a) the name of the society;
- (b) the situation and postal address of the head office in Kenya of the society;
- (c) such other information as may be prescribed.

8. Effect of registration

From the date of registration of a society under this Act, the society shall be a body corporate by its registered name with perpetual succession, and may in that name sue and be sued, and, subject to this Act and to its rules, shall be capable of doing all acts which a body corporate may by law perform.

9. Names of building societies

(1) No building society shall be registered by a name which is identical with that of another building society previously incorporated or registered, or by a name which so nearly resembles it as to be likely to deceive, unless that other society is in course of being terminated or dissolved and consents to the registration.

(2) The name of every building society shall end with the words "Building Society".

(3) A building society shall not use any name or title other than its registered name.

(4) The Registrar may, unless otherwise ordered by the Cabinet Secretary, refuse to register a building 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.

10. Contents of rules of building societies

The rules of every building society shall set forth—

- (a) the name of the society and the situation and postal address of the chief office of the society;
- (b) the principal objects of the society;
- (c) the manner in which a person may become a member, and may cease to be a member, of the society;
- (d) 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;
- (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 terms upon which shares are to be issued and withdrawn and the manner in which contributions are to be paid to the society;
- (g) the conditions upon which the society will accept and repay deposits;
- (h) the manner in which and the conditions upon which advances upon the security of a mortgage or otherwise are to be made and repaid and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made, with tables, where applicable in the opinion of the Registrar, showing the amounts due from the borrower after each stipulated payment;
- (i) the manner in which profits or losses are to be ascertained and dealt with or provided for;
- (j) whether the society intends to borrow money and if so, within what limits not exceeding those prescribed by this Act;
- (k) the limits of loans to or deposits by any one person;
- (l) the manner of altering and rescinding the rules of the society and of making additional rules;
- (m) the manner of appointing, remunerating and removing the board of directors, their qualifications, powers and duties, and the manner of appointing, remunerating and removing members of local boards or committees and of auditors and other officers of the society;
- (n) the manner of calling general and special meetings of the members, the quorum necessary for the transaction of business at meetings and the right to and manner of voting thereat;
- (o) provision for an annual or more frequent audit of the accounts and inspection by the auditors of the mortgages and other securities belonging to the society;
- (p) whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the High Court, to the Registrar or to arbitration;

- (q) provision for the device, custody and use of the common seal of the society;
- (r) provision for the custody of the instruments of mortgage and of other securities belonging to the society;
- (s) the charges, fees, fines and forfeitures which may be demanded from or imposed on members of the society and borrowers;
- (t) the manner in which the society shall be dissolved;
- (u) the financial year of the society; and
- (v) such other matters as may be prescribed from time to time.

[Act No. 16 of 1985, s. 4, Act No. 10 of 1986, s. 36.]

11. Common seal

(1) Every building society shall have a common seal which shall bear the registered name of the society.

(2) A building society which is by its rules permitted to carry on its business outside Kenya may, if authorized by its rules, have for use in any place not situated in Kenya an official seal, which shall be a facsimile of the common seal of the society with the addition on its face of the name of the place where it is to be used.

(3) A deed or other document to which an official seal of a foreign building society registered under section 75 is duly affixed shall bind the society as if it had been sealed with the common seal of the society.

12. Head office and postal address

Every building society shall have a head office and postal address in Kenya to which all communications and notices may be addressed.

PART IIA – ANNUAL LICENCES

12A. Annual licences to be held

(1) Notwithstanding any other provision of this Act, no building society shall carry on business in Kenya as a building society unless it holds an annual licence to do so in accordance with section 12B.

(2) A building society which contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings and in addition shall be liable to pay any annual licence fee which should have been paid.

(3) Where a building society contravenes subsection (1), every person who at the time of the contravention was a director or officer or was concerned in the management of the building society, or was acting, or purporting to act, in such a capacity, shall also be guilty of an offence unless he proves—

- (a) that, through no act or omission on his part, he did not know that the contravention was intended or about to take place or was taking place; or
- (b) that he took all reasonable steps to prevent the contravention taking place.

(4) A person who is guilty of an offence under subsection (3) shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

[Act No. 16 of 1985, s. 5.]

12B. Issue of annual licence

(1) Notwithstanding any other provision of this Act, where a building society is registered under this Act—

- (a) an application by the building society for an annual licence to carry on business as a building society; or
- (b) an application to open a new branch,

shall be made to the Cabinet Secretary for the time being responsible for finance, through the Central Bank on such form as may be prescribed, and with payment of the annual licence fee specified in the First Schedule:

Provided that no building society shall open a new place of business or change the location of an existing place of business without prior approval of the Cabinet Secretary.

(2) The Cabinet Secretary for the time being responsible for finance may, subject to such conditions as he may consider necessary, issue an annual licence to a building society in such form as may be prescribed.

(3) In considering an application for an annual licence the Cabinet Secretary for the time being responsible for finance may require to be satisfied as to the financial condition and history of the building society, the character of its management including the integrity and qualifications of its directors, the adequacy of its capital and purposes of continued existence and that the public interest will be served by the licensing of the building society.

(4) For the purposes of this section, the criteria for assessing the professional or moral suitability of persons proposed to manage or control a building society shall be as prescribed in the Fourth Schedule.

(5) An annual licence issued under subsection (2) shall remain in force until the 31st December in the year in which it is issued but may be renewed from year to year on payment of a further annual licence fee.

(6) The Cabinet Secretary for the time being responsible for finance may at any time endorse any conditions on an annual licence or suspend or vary or revoke the licence if in his opinion it is expedient to do so.

(7) A building society which fails to renew its annual licence within the first three months of its expiry shall pay late penalty equal to fifty per cent of the fee plus interest on the total sum at the rate of three per cent per month or part thereof.

[Act No. 13 of 1987, s. 4, Act No. 8 of 1991, s. 83, Act No. 4 of 1999, s. 92.]

12C. Display of annual licence

An annual licence shall be prominently displayed by the building society at its head office in Kenya and a copy shall be prominently displayed at every branch office in Kenya.

[Act No. 16 of 1985, s. 5.]

12D. Change of name and amalgamation

(1) If a building society changes its name in accordance with section 46, when the Registrar registers one copy of the resolution under section 46(3) he shall endorse any annual licence in force with the new name of the society.

(2) Where two or more building societies amalgamate under Part VIII, none of those societies are entitled to any refund of annual licence fees in respect of any unexpired periods of their annual licences, but the Cabinet Secretary for the time

being responsible for finance shall issue to the new society an annual licence for the longest of those unexpired periods.

[Act No. 16 of 1985, s. 5.]

12E. Revocation or cancellation of annual licence

(1) If—

- (a) registration of a building society is suspended or cancelled under section 63; or
- (b) a building society is dissolved in terms of section 64 or 70,

any annual licence in force shall be deemed to be revoked for the period of suspension or, in the case of a cancellation or dissolution, permanently.

(2) Where an annual licence is—

- (a) deemed to be revoked under subsection (1); or
- (b) wholly or partly cancelled at the request of the building society,

the building society is not entitled to any refund of the annual licence fee in respect of any unexpired period of the licence.

[Act No. 16 of 1985, s. 5.]

12F.

[Spent]

PART III – MANAGEMENT OF BUILDING SOCIETIES

13. Directors

(1) Every building society shall have a board of directors consisting of three or more persons, of whom the secretary may, but need not, be one.

(2) The duties of every director of a building society shall include the duty of satisfying himself that the arrangements made for assessing the adequacy of any security to be taken in respect of an advance to be made by the society are such as may be reasonably expected to ensure that the adequacy of a security to be so taken will be assessed by a competent and prudent person experienced in the matters relevant to the determination of the value of that security:

Provided that nothing in this subsection shall preclude a director of a building society from approving those arrangements by reason only that the arrangements provide for the assessment of the adequacy of the security by himself or any other director of the society.

14. Secretary

(1) Every building society shall have a secretary.

(2) Anything required or authorized to be done by or to the secretary may, if the office is vacant or there is for any other reason no secretary capable of acting, be done by or to any assistant or deputy secretary, or, if there is no assistant or deputy secretary capable of acting, by or to an officer of the society authorized generally or specially in that behalf by the board of directors.

15. Audit

Every building society shall have one or more auditors, each of whom shall be the holder of a practising certificate issued pursuant to section 21 of the Accountants Act (Cap. 531).

[Act No. 2 of 1977, s. 46, Act No. 13 of 1987, s. 6, Act No. 15 of 2008, s. 49.]

16. Officers to give security

Every officer of a building society having the receipt or charge of any money belonging to the society shall before taking upon himself the execution of his office become bound with one sufficient surety at the least in a bond in the prescribed form, or give such other security as the society may direct, in such sum as the society may require, conditioned for rendering a just and true account of all moneys received and paid by him on account of the society, and for payment of all sums of money due from him to the society at such times as its rules appoint or as the society may require.

17. Officers to account

Every officer of a building society and his executors or administrators shall, upon demand made or notice in writing given or left at his last or usual place or residence, render an account of all moneys received or paid by him on account of the society and for all moneys remaining in his hands and shall deliver all securities and effects, books, papers and property of the society in his hands or custody to such person as the society may appoint.

18. Officers not to accept gifts

(1) No director, secretary, surveyor, advocate or other officer of a building society shall, in addition to the remuneration prescribed or authorized by the rules of the society, receive from any other person any gift, bonus, commission or benefit for or in connection with any transaction whatsoever relating to the business of the society.

(2) A person who pays or accepts any such gift, bonus, commission or benefit shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings and in default of payment to imprisonment for a term not exceeding six months, and the person accepting the gift, bonus, commission or benefit shall, as and when instructed by the Court by whom he is convicted, pay over to the society the amount or value of the gift, bonus, commission or benefit, and in default of payment shall be liable to imprisonment for a term not exceeding six months.

18A. Disqualification of officers

(1) Notwithstanding any other provisions of this Act or the rules of a building society, a person who is an officer of a building society shall cease to hold office if he—

- (a) becomes bankrupt or suspends payment or compounds with his creditors; or
- (b) is convicted of an offence involving dishonesty or fraud or is directly or indirectly connected with a building society which has been dissolved in terms of section 64 or 70.

(2) Any person who continues to act as an officer of a building society after he has been disqualified by virtue of this section shall be guilty of an offence and liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding two years or to both.

[Act No. 13 of 1987, s. 7.]

19. Restriction of payment of commissions

- (1) It shall not be lawful—

- (a) for a person having a financial interest in the disposition of land to receive or to agree to receive a commission or gift from a building society or from any officer, servant or agent of a building society, in consideration of the introduction of mortgage business to the society in connection with the disposition of the land or in consideration of a promise to introduce that business to the society; or
- (b) for a building society, or any officer, servant or agent of a building society, to offer to give or agree to give a commission or gift to any person known to the society, officer, servant or agent, as the case may be, to have a financial interest in the disposition of land or to be a servant of a person having such an interest, for consideration mentioned in paragraph (a).

(2) For the purposes of this section, a person who is employed, otherwise than in pursuance of a contract of service, in connexion with the disposition of land by a person who has a financial interest in the disposition shall be treated, so far as relates to the disposition of that land, as a servant of the person having the interest, unless he carries on, independently of that person, the business of an advocate, estate agent, surveyor or auctioneer.

(3) Where a building society has a financial interest in the disposition of land, nothing in this section shall prohibit—

- (a) the society, or any officer, servant or agent of the society, from offering or giving or agreeing to give, in relation to the disposition of that land, a commission or gift to a servant of the society (not being a person who, to the knowledge of the society, officer, servant or agent, as the case may be, either himself has a financial interest in the disposition of the land or is, in addition to being a servant of the society, also the servant of a person other than the society who has such an interest) for consideration mentioned in subsection (1); or
- (b) a servant of the society (not being a person who himself has a financial interest in the disposition of that land, or who is, in addition to being the servant of the society, also the servant of a person other than the society who has such an interest) from receiving or agreeing to receive, in relation to the disposition of that land, a commission or gift from the society, or from any officer, servant or agent of the society, for any such consideration.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding six months or to both.

20. Provisions excluding liability of officers forbidden

Any provision, whether contained in the rules of a building society or in a contract with a building society or otherwise, for exempting a director, manager or officer of a building society, or a person (whether an officer of the society or not) employed by the society as auditor, from, or indemnifying him against, a liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the society, shall be void:

Provided that a building society may, in pursuance of such a provision, indemnify a director, manager, officer or auditor against liability incurred by him in

defending proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with an application under section 21 in which relief is granted to him by the court.

21. Powers of court to grant relief in certain cases

(1) If, in proceedings for negligence, default, breach of duty or breach of trust against a person to whom this section applies, it appears to the court hearing the case that that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, the court may relieve him either wholly or partly from his liability on such terms as the court may think fit.

(2) Where a person to whom this section applies has reason to apprehend that a claim will or might be made against him in respect of negligence, default, breach of duty or breach of trust, he may apply to the High Court for relief, and the High Court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought.

(3) The persons to whom this section applies are the directors, the members and officers of a building society, and any person employed by a building society as an auditor, whether he is or is not an officer of the society.

PART IV – POWERS OF BUILDING SOCIETIES

22. Power to borrow

(1) Subject to this Act, a building society may receive deposits or loans at interest from its members or from other persons to be applied to the purposes of the society.

(2) A building society shall, at all times maintain a ratio of not less than eight per cent between its core capital and its total deposit liabilities.

(3) The amount of deposits or loans from any one person shall be within any limits prescribed by the rules of the society.

(4) In calculating the amount for the time being secured to a building society by mortgages from its members for the purposes of subsection (2), there shall be disregarded—

- (a) the amount secured on properties the payments in respect of which, whether of principal, interest or otherwise, were upwards of twelve months in arrear at the date of the society's last preceding annual account and statement; and
- (b) the amount secured on properties of which the society had been twelve months in possession at the date of such account and statement.

(5) Money deposited with a building society as security for an advance made by the building society to a member, or as security for a guarantee given in respect of such an advance, shall be deemed to be money borrowed by the society.

(6) A building society shall not accept a deposit or loan except on the terms that not less than one month's notice may be required by the society before repayment or withdrawal.

(7) Every deposit book or acknowledgment or security of any kind given for a deposit or loan by a building society shall have printed or written therein or thereon the whole of this section.

(8) If a building society contravenes this section, the society and every director, secretary or other officer of the society who is a party to the contravention shall be guilty of an offence and liable to a fine not exceeding two thousand shillings.

(9) If a building society receives loans or deposits in excess of the limits prescribed by this Act, the directors of the society shall be personally liable for the amount so received in excess.

[Act No. 4 of 1999, s. 93.]

23. Power to hold land

(1) Subject to the provisions of the Land Act (Cap. 280) and the Land Control Act (Cap. 302), a building society may—

- (a) acquire and hold land which the society requires for its business premises or for the housing of its staff; and
- (b) acquire by foreclosure or surrender land mortgaged to the society,

but land acquired by a building society under paragraph (b) shall be sold and converted into money within a period of two years or such longer period as the Registrar may authorize in writing.

(1A) Notwithstanding subsection (1) a building society may at a general meeting resolve to acquire and hold land and may acquire and hold land for the purposes of developing residential houses for its members in accordance with the rules of the building society.

(2) A building society may let any part of its business premises which is not required for the immediate use of the society.

[Act No. 28 of 1959, s. 17, L.N. 142/1961, L.N. 147/1961, L.N. 457/1963, Act No. 34 of 1967, 2nd Sch., Act No. 13 of 1987, s. 8.]

24. Power to make advances to members

(1) A building society may, subject to this section, make advances to its members out of its funds upon the security of land.

(2) No building society shall advance money on the security of land which is subject to a prior mortgage, unless the prior mortgage is in favour of the society making the advance; and if any advance is made in contravention of this subsection, the directors of the society who authorized the advance shall be jointly and severally liable for any loss on the advance occasioned to the society.

(3) No building society shall, in Kenya—

- (a) grant or permit to be outstanding an advance or credit facility to any one of its members in excess on twenty-five per cent of its core capital;
- (b) grant or permit to be outstanding any advance or credit facility to any of its directors or employees in excess of twenty per cent of its core capital.

(4) In determining the amount of any advance made by a building society to one of its members upon the security of land, the society shall not take into account the value of any additional security taken by the society for the advance, other than a security of a class specified in the Second Schedule.

(5) Where a charge upon a policy of life assurance is taken as additional security for an advance, the value of the policy shall be assessed at an amount not exceeding the surrender value thereof at the time when the advance is made.

(6) Where a guarantee given in pursuance of a continuing arrangement is taken as additional security for an advance, the advance shall not exceed an amount which may be prescribed or ninety per centum of the amount of the purchase price for the defraying of which the advance is made, whichever is the less, without the consent in writing of the Registrar; and in any such case the basic advance shall not exceed sixty-five per centum of that amount and the excess advance shall not exceed twenty-five per centum of that amount.

(7) Where a building society takes as additional security for an advance to a member a guarantee given in pursuance of a continuing arrangement, the terms of the advance shall not provide for the payment of any sums to the society in respect of the advance after the expiration of a period of twenty years (or such other period, being either longer or shorter, as the Registrar may authorize in writing) from the date on which the advance is made, nor, after the advance has been made by the society, shall the society make any agreement which has the effect of rendering any sums payable to the society in respect of the advance after the expiration of that period:

Provided that nothing in this subsection shall affect the power of a society to make such an agreement in relation to an advance which has been made by the society not less than one year before the making of the agreement if, in the opinion of the directors, it is desirable so to do in order to avoid hardship to a member of the society.

(8) Notwithstanding the provisions of subsections (1) to (7), a building society may, for the benefit of its members, extend loans, advances, guarantees and other credit facilities not secured by land and at such terms and conditions as the society considers appropriate.

[Act No. 4 of 1999, s. 94, Act No. 7 of 2001, s. 9.]

25. Power to invest

(1) A building society may, from time to time as its rules permit, invest any portion of its funds not immediately required for its purposes in or upon any stock, shares or securities for the time being authorized by law for the investment of trust moneys or in any other class or classes of investment authorized by the Cabinet Secretary by notice in the *Gazette*.

(2) A building society may keep money on current account and deposit account at one or more banks or with the Kenya Post Office Savings Bank.

26. Power to make further advances

(1) For the purposes of facilitating repayment to a building society of an advance made or to be made by the society to a member upon the security of land, a society may make to the member, by way of addition to the advance, a further advance of the whole or part of such sum as may be necessary to enable payment to be made of a single premium payable in respect of a policy of life assurance upon the life of the member or the spouse or son or daughter of the member, being a policy which provides for payment, in the event of the death of the person upon whose life the policy is effected before the advance has been repaid, of a sum not exceeding a sum which is sufficient to defray the sums which are, at and after the time of the death, payable to the society in respect of the advance as increased

by the additional advance made by the society under the power conferred by this subsection.

(2) Where, in pursuance of the power conferred by subsection (1), a society has added a sum to an advance made by the society upon the security of land, the sum so added to the advance shall not be deemed to form part thereof for the purpose of determining whether the advance is beyond the power of the society by reason—

- (a) of the amount of the advance being excessive; or
- (b) of the amount of any excess advance included in the advance being greater than that which is authorized by this Act.

(3) Where a society has made an advance to a member upon the security of land, and the advance is an advance to which subsection (7) of section 24 apply, then, if the society subsequently adds to the advance a further advance under the power conferred by this section, those provisions shall also apply in relation to that further advance; and, for the purpose of the application thereto of those provisions, the further advance shall be deemed to have been made at the time when the original advance was made.

27. Notice to be given where security for advance to member is taken from third party

(1) Where a building society makes to a member an advance for the purpose of its being used in defraying the purchase price of land and takes any security for the advance from another person, then, unless before any contract requiring the member to repay the advance is entered into the society gives to the member a notice in writing, in the prescribed form—

- (a) stating, if the land is mortgaged or is to be mortgaged to the society as security for the advance, the maximum amount which the society would consider proper to advance upon the security of that land if no other security were taken by the society for the advance, and the amount, if any, by which the advance exceeds that maximum amount; and
- (b) containing such particulars as may be prescribed relating to any security for the advance which is taken or is to be taken from any person other than the member, no sums shall be recoverable,

either by the society or by any other person, in respect of the advance or of any security given therefor (whether by the member or otherwise), nor shall any rights be exercisable by virtue of any such security, except by leave of the court.

(2) Where a society makes such an advance and takes such security without giving notice to the member in accordance with the foregoing provisions of this section, the court may, either upon an application for leave, or upon an application made by the member, reopen the transaction, and may make such orders as to the sums which may be recovered in respect of the advance and of any security given therefor, as to the exercise of any rights conferred by any such security and otherwise as the court considers just.

28. Power to carry on business abroad

A building society may, where its rules so allow, carry on business in any place outside Kenya and invest any portion of its funds not immediately required for its purposes in advances upon the security of land in any such place:

Provided that—

- (i) no building society, other than an existing society, shall make any such investment within five years of its registration under this Act;
- (ii) the amount which a building society may invest outside Kenya shall not, without the consent of the Cabinet Secretary, exceed one-fifth of its capital assets for the time being in Kenya.

29. Additional powers of building societies

Subject to this Act, and to its rules, a building society shall have the following powers in addition to the powers hereinbefore conferred—

- (a) to borrow money at interest, other than in the form of deposit, 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;
- (b) 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 insurance so effected and of the insurances pledged to the society;
- (c) 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.

29A. Minimum holding of liquid assets

(1) Notwithstanding the provisions of this Part or any rules made thereunder, a building society shall maintain such minimum holding of liquid assets as the Central Bank shall, from time to time, determine.

(2) For the purposes of this section, "liquid assets" means all or any of the following—

- (a) notes and coins which are legal tender in Kenya;
- (b) balances held at the Central Bank;
- (c) balances in banks, financial institutions and other building societies in Kenya, after deducting therefrom balances owed to those banks, financial institutions or other building societies;
- (d) Kenya treasury bills and bonds of a maturity not exceeding ninety-one days which are freely marketable and rediscountable at the Central Bank;
- (e) such other assets as the Central Bank may, from time to time, specify.

(3) A building society which fails to comply, with any of the requirements of subsection (1), within such period as the Central Bank may specify, shall be liable to a penalty interest charge not exceeding one per cent of the amount of the deficiency for everyday on which the offence continues.

[Act No. 12 of 1984, Sch., Act No. 16 of 1985, s. 6, Act No. 4 of 1999, s. 95.]

30. Dividends payable only out of profits

Notwithstanding anything to the contrary contained in its rules, no building society shall pay any dividend or interest on any of its shares otherwise than out of profits earned by the society.

PART V – MEETINGS AND PERIODICAL RETURNS

31. Annual general meeting

A building society shall within five months of the end of its financial year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it.

32. Other meetings

The board of directors of a building society shall call such other general or special meetings as may be required by the rules of the society or as they may consider desirable, and shall, notwithstanding anything contained in the rules of the society, call a general or special meeting on the application of not less than one-tenth of the whole number of members or of not less than fifty members, whichever is the less.

33. Annual accounts and statement

(1) A building society shall, as soon as is practicable and not more than four months after the expiration of its financial year, cause to be prepared an account of all the income and expenditure of the society during that financial year and a general statement of its funds and effects, liabilities and assets; and the account and statement shall be attested to by the auditors of the society and shall be counter-signed by at least two directors thereof.

(2) The account and statement shall be in such form and shall contain such particulars as may be prescribed, and, without prejudice to the generality of the foregoing, shall show—

- (a) the amounts due to the holders of the various classes of shares respectively;
- (b) the amounts due to depositors and creditors for loans;
- (c) the balance due or outstanding on the security of mortgages (not including prospective interest); and
- (d) the amount invested by the society in other securities, showing separately investments in and investments outside Kenya.

(3) Every auditor in attesting an annual account or statement shall either certify that it is correct, duly vouched and in accordance with the law or specially report to the society in what respect he finds it incorrect, unvouched or not in accordance with the law, and shall also certify that he has at that audit actually inspected the securities belonging to the society, and shall state the number of properties with respect to which evidence of title has been produced to and actually inspected by him.

(4) Every building society shall cause a copy of the account and statement to be published in a national newspaper, and copies of the account and statement shall be available at the offices of the building society not less than fourteen days before the meeting at which they are to be presented.

(5) A copy of the annual account and statement, certified in such manner as may be prescribed, shall be sent to the Registrar within fourteen days after the annual or other general meeting at which it is presented or within five months after the expiration of the financial year to which it relates, whichever period expires first.

(6) If a building society fails to comply with the provisions of this section, the society and every director, secretary or other officer of the society shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

[Act No. 10 of 1986, s. 36.]

34. Returns of sales and transfers

A building society shall, in respect of each financial year, cause to be prepared and sent to the Registrar at the same time as its annual account and statement is sent a return in such form as may be prescribed containing such particulars as may be prescribed with respect to—

- (a) every property which has, during the period to which the return relates, been sold by the society in the exercise of its powers as mortgagee thereof;
- (b) every mortgage which, during the same period, has been transferred by the society.

PART VI – MISCELLANEOUS PROVISIONS

35. Books and records to be kept by building societies

(1) A building society shall keep the following books—

- (a) a minute book recording all proceedings of general meetings;
- (b) a minute book recording all proceedings of the board of directors;
- (c) a register of directors, showing the full names of every director, his postal and residential address, his nationality and, if that nationality is not his nationality of origin, his nationality of origin, the date of his appointment and the date of his ceasing to hold office as such director; and
- (d) such books of account as may be necessary to show the receipts and expenditure of the society, the amounts due to the holders of the various classes of shares respectively and to depositors and creditors for loans, the balance due or outstanding on the security of mortgages and the amount invested by the society.

(2) A building society shall cause to be kept records showing with respect to every advance made by the society on the security of any land—

- (a) the amount at which the land was assessed and the name of the person by whom the assessment was made; and
- (b) particulars of any additional security taken by the society, including the amount at which it was assessed and the name of the person by whom the assessment was made.

(3) A building society registered under section 6 shall keep all registers, minute books, books of account and other records, which it is required by this Act to keep, in English.

(4) If a building society fails to comply with the provisions of this section, the society and every director, secretary or other officer of the society shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.

36. Rules to be binding on members and others

The rules of a building society as for the time being registered under this Act shall be binding on the several members and officers of the society and on all

persons claiming on account of a member or under the rules, all of whom shall be deemed and taken to have full notice thereof.

37. Duty to supply copies of rules

A building society shall supply to any person requiring it a complete printed copy of its rules, with a copy of the certificate of registration appended thereto, and may charge therefor a sum not exceeding five shillings.

38. Evidence of rules

A copy of the rules of a building society, certified by the secretary or other officer of the society to be a true copy of its registered rules, shall, in the absence of any evidence to the contrary, be admissible as evidence of the rules.

39. Persons under twenty-one

(1) A person who is under the age of twenty-one years may be admitted as a member of a building society the rules of which do not prohibit his admission.

(2) A member of a building society while under the age of twenty-one years may—

- (a) give all necessary acquaintances;
- (b) consent to the dissolution of the society; and
- (c) by his next friend, present a petition for winding-up; but may not—
 - (i) vote at any meeting of the society;
 - (ii) hold any office in the society;
 - (iii) transfer any share standing in his name; or
 - (iv) execute a mortgage to secure advances made to him by the society.

40. Shares may be held jointly

Two or more persons may jointly hold a share of shares in a building society; but the right to vote at a meeting of the society shall be limited to one of those shareholders.

41. Prohibition of balloting

No building society shall cause or permit applicants for advances to ballot for precedence or in any way make the granting of an advance depend on any chance or lot.

42. Implied warranty

Where a building society makes to a member an advance for the purpose of its being used in defraying the purchase price of land, the society shall be deemed to warrant to the member that the purchase price is reasonable unless, before any contract requiring the member to repay the advance is entered into, the society gives to the member a notice in writing in such form as may be prescribed stating that the making of the advance implies no such warranty.

43. Exercise of power of sale

(1) A building society exercising its power of sale of any land mortgaged to it shall take reasonable care to ensure that in the exercise of the power the price at which the land is sold is the best price which can reasonably be obtained; and any

agreement if and so far as it relieves or may have the effect of relieving a society from the obligations imposed by this section shall be void.

(2) Where building society has exercised its power of sale of land mortgaged to it, it shall, within twenty-eight days from the completion of the sale, send by registered post to the person who immediately before the sale was the owner of the land at his last known address a notice containing such particulars relating to the sale as may be prescribed.

(3) Nothing in subsection (2) shall affect the operation of any rule of law relating to the duty of a mortgagee to account to a mortgagor.

(4) If a building society contravenes the provisions of subsection (2), the society and every director, secretary or other officer of the society shall be guilty of an offence and liable to a fine not exceeding one thousand shillings.

44. Lost or destroyed share certificates, etc.

(1) If a share certificate, savings deposit pass book, subscription share pass book, deposit receipt or fixed deposit receipt, or any statement or other record of payment, 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 or destruction thereof 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 the certificate, pass book, receipt, statement or record:

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

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

45. 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 of or extract from any such document or part thereof kept by the Registrar.

PART VII – CHANGE OF NAME, ADDRESS, OFFICERS AND CONSTITUTION

46. Change of name

(1) A building society may, by special resolution, change its name.

(2) A society which changes its name in accordance with subsection (1) shall, within fourteen days from the date of the meeting at which the resolution was adopted, send to the Registrar two copies of the resolution certified in such manner as may be prescribed.

(3) Subject to section 9, the Registrar shall register one copy of the resolution and return the other to the society endorsed with a certificate of registration.

(4) A change of name by a building society in accordance with the provisions of this section shall not affect any right or obligation of the society or 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 continued or

commenced against it by its former name may be continued or commenced against it by its new name.

47. Change of address

Every building society which changes the situation of its registered office or its postal address shall, within fourteen days after the change, send to the Registrar notice thereof in the prescribed form, and the Registrar shall register it.

47A. Consent required for branch office

A building society shall not open or operate a branch office or an office other than its registered office without the written consent of the Registrar.

[Act No. 16 of 1985, s. 8.]

48. Change of directors

Whenever a person is appointed a director of a building society or ceases for any reason to be a director of a building society, the society shall within fourteen days send to the Registrar notice thereof in the prescribed form.

49. Alteration of rules

(1) A building society may, by special resolution, alter or rescind any of its rules or make any additional rule; but no such special resolution shall be valid until registered under subsection (3).

(2) Where a building society has altered or rescinded any of its rules or made any additional rule, it shall, within fourteen days from the date of the meeting at which the resolution was adopted, send to the Registrar two copies of the resolution, certified in such manner as may be prescribed.

(3) If the Registrar is satisfied that the alteration, addition or rescission is in conformity with this Act, he shall register one copy of the resolution and return the other to the society endorsed with a certificate of registration.

50. Penalties

If a building society fails to comply with the provisions of subsection (2) of section 46, section 47, section 47A, section 48 or subsection (2) of section 49, the society and every director, secretary and other officer of the society shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

[Act No. 16 of 1985, s. 9.]

PART VIII – AMALGAMATION OF SOCIETIES AND TRANSFER OF ENGAGEMENTS

51. Amalgamation of building societies

(1) Subject to section 53, two or more building societies may unite and become one society, with or without any dissolution or division of the funds of those societies or either of them, upon such terms as are agreed by special resolution of each of them.

(2) Notice of any such union shall be sent to the Registrar in the prescribed form.

(3) Upon completion of the union in terms of this section, the building societies so united shall be deemed to be dissolved and, their registrations having been cancelled, the Registrar shall register the new society in terms of this Act.

52. Transfer of engagements

(1) Subject to section 53, a building society may by a special resolution transfer its engagements to another building society which may undertake to fulfil those engagements, and a building society may undertake to fulfil engagements of another building society by a special resolution.

(2) Notice of any such transfer shall be sent to the Registrar in the prescribed form and shall be registered by him.

53. Special provisions relating to amalgamations and transfers of engagements

(1) Save as is hereinafter provided, no union of building societies and no transfer of engagements shall take effect unless or until the consent thereto in writing of holders of not less than two-thirds of the whole number of shares of each society party thereto has been obtained.

(2) A building society desiring to unite with one or more other building societies, or to transfer its engagements to another building society, or to undertake to fulfil the engagements of another building society, may make an application in that behalf to the Registrar in the prescribed manner, and shall publish notice of the application in the *Gazette* and, if the Registrar so requires, in one or more newspapers, and the Registrar, after hearing the society and any other person whom he considers entitled to be heard, may confirm the union, transfer or undertaking notwithstanding that the consent of the holders of two-thirds of the whole number of shares of the society has not been obtained in the manner required by this section.

54. Registration of amalgamation or transfer of engagements to operate as conveyance

Upon the registration by the Registrar of the notice of union of any building societies under section 51, or of the transfer of the engagements of any building society to another building society under section 52, or upon the confirmation by the Registrar of any such union or transfer under section 53, there shall vest in the united society or in the society to which another society has transferred its engagements, as the case may be, by virtue of this section and without further or other assurance, all the funds, assets and movable or immovable property vested or held in the name of the societies so uniting or of the society so transferring its engagements.

55. Amalgamation or transfer of engagements not to prejudice creditors

No union of building societies and no transfer of engagements from one building society to another shall affect the rights of any creditor of either or any of the societies concerned.

55A. Application for transfer of business to a company

(1) Where a building society wishes to transfer its business including all its assets and liabilities, to a limited liability company incorporated under the Companies Act (Cap. 486), such building society may make an application to the Cabinet Secretary responsible for finance through the Central Bank in the prescribed manner.

(2) An application under subsection (1) shall be supported by—

- (a) a report signed by all directors outlining the reasons for seeking to undertake such transfer;

- (b) a resolution approved by the creditors of the society sanctioning the intended transfer;
- (c) a special resolution approved by three-quarters of the members of the society sanctioning the intended transfer;
- (d) audited statements of accounts confirming that the society is solvent and has carried on its business in conformity within the provisions of the Act and the society's by-laws and regulations;
- (e) a resolution approved by the annual or extraordinary general meeting of the limited company to which the transfer is intended to be made stating that the company is financially able to satisfy on demand the claims of all creditors of the society;
- (f) full disclosure of the shareholders and directors of the company including information on their interests in the company;
- (g) a copy of the company's memorandum and articles of association; and
- (h) a copy of the company's latest audited statements of accounts.

(2A) The Central Bank shall examine every application made under subsection (1) and shall forward the application, together with its recommendations thereon, to the Cabinet Secretary responsible for finance.

(3) In considering an application made by a society under subsection (1) the Cabinet Secretary responsible for finance shall ensure that—

- (a) the intended transfer is in good faith for the benefit of the members of the building society, its creditors and the general public;
- (b) the company carries on or is licensed to carry on the business of an institution under the Banking Act (Cap. 488);
- (c) the company and the society are financially solvent and the company is capable of assuming the society's business without adversely affecting any member, creditor, borrower or other interested party.

(4) Where the Cabinet Secretary responsible for finance is satisfied that the intended transfer fulfils the conditions set out in subsection (3), the Cabinet Secretary responsible for finance shall cause the building society to publish a notice in the *Gazette* and in at least one national daily newspaper informing the public of the intended transfer and inviting any interested party with objections thereto to appear and make representations to the Cabinet Secretary responsible for finance at a specific venue within a period not exceeding thirty (30) days.

(5) The Cabinet Secretary responsible for finance may, after hearing all representations under subsection (4), approve or reject the application.

(6) *Repealed by Act No. 7 of 2002, s. 56.*

[Act No. 2 of 2002, Sch., Act No. 7 of 2002, s. 56.]

55B. Transfer of business of a company

Where a society has been granted permission to transfer its business to a company, the following arrangements shall apply—

- (a) the existing members of the building society shall become ordinary shareholders in the company and the value of the shares allotted shall be equivalent to the value of the shares held by them in the building society;

- (b) all debts payable by or to the building society shall with effect from the date of the transfer be paid by or to the company;
- (c) all contracts concluded by the building society shall at the time of the transfer be binding on the company;
- (d) any mortgage, charge, title deed, conveyance, discharge, reconveyance or lease held by the building society shall be deemed without any further assurance to be held by the company which shall be capable of discharging, reconveying, transferring or foreclosing in respect of any particular property as the building society would have done had there been no transfer;
- (e) all accounts held by depositors in the building society shall be deemed to be accounts held with the company, which shall honour all the terms and conditions relating to such accounts.

[Act No. 2 of 2002, Sch.]

PART IX – DETERMINATION OF DISPUTES

56. Determination of disputes by arbitrators or the Registrar

(1) Where the rules of a building society direct that a dispute shall be referred to arbitration by arbitrators, arbitrators shall be nominated in the manner provided by the rules, or, if there is no such provision, may be elected at a general meeting of the society, none of the arbitrators being beneficially interested, directly or indirectly, in the funds of the society.

(2) Not less than three arbitrators shall be chosen by ballot in each case of dispute, the number of the arbitrators and mode of ballot being determined by the rules of the society.

(3) In the case of the death or refusal or neglect of any of the arbitrators to act, the society shall nominate, or elect in general meeting, as the case may require, an arbitrator to act in the place of the arbitrator dying, or refusing or neglecting to act.

(4) The names of all arbitrators nominated or elected to act under the provisions of this section shall be entered in the minute book of the society.

(5) Any award made by arbitrators or the major part of them shall determine the dispute.

(6) Where the parties to a dispute arising in a building society agree to refer the dispute to the Registrar, or where the rules of the society direct disputes to be referred to the Registrar, the award of the Registrar shall have the same effect as that of arbitrators.

(7) The arbitrators or the Registrar shall, at the request of any party to the arbitration or any person claiming under him, and upon payment of the costs and charges of filing the award, cause the award, or a signed copy of it, to be filed in the High Court; and notice of the filing shall be given to the parties by the arbitrators or the Registrar.

(8) An award in an arbitration under this section, on being filed in the High Court in accordance with subsection (7), shall be enforceable as if it were a decree of the Court.

57. Determination of disputes by the High Court

The High Court may hear and determine any dispute—

- (a) if it appears to the Court, upon the petition of any person concerned, that application has been made by either party to the dispute to the other party for the purpose of having the dispute settled by arbitration under the rules of the society and that the application has not within forty days been complied with or that the arbitrators have refused or for a period of twenty-one days have neglected to make any award; or
- (b) where the rules of the society direct that any dispute shall be referred to the High Court.

58. Determination of disputes by arbitrators or the Registrar to be final

(1) Subject to subsection (2), a determination by arbitrators or by the Registrar under this Act of a dispute shall be binding and conclusive on all parties and shall be final to all intents and purposes, and shall not be subject to appeal and shall not be removed or removable into any court or restrained or restrainable by the injunction of any court.

(2) The arbitrators or the Registrar, as the case may be, may, at the request of either party, state a case for the opinion of the High Court on a question of law (but shall not be compelled to do so), and may grant to either party in the dispute such discovery as to documents and otherwise as might be granted by the High Court, discovery to be made on behalf of the society by such officer of the society as the arbitrators or the Registrar may determine.

PART X – POWERS OF THE REGISTRAR**59. Power to require production of books, etc.**

(1) The Registrar may at any time, by notice in writing served on a building society or on any person who is or has been an officer of such a society, require the society or person to produce to the Registrar such books, accounts, deeds and other documents relating to the business of the society and to furnish to him such other information relating to that business as he considers necessary for the exercise of the powers given him by this Act, and any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified by a statutory declaration.

(2) If a building society or other person fails to comply with the requirements of a notice under this section, the society, and every director, secretary or other officer of the society or such other person, as the case may be, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings.

60. Power to cause inspection of books

(1) The Registrar may on the application of one-tenth of the whole number of members of a building society or of fifty members, whichever is the less, each such applicant having been a member of the society for not less than twelve months immediately preceding the date of the application, appoint an accountant or actuary to inspect the books of the society and to report thereon.

(2) A person applying under subsection (1) for inspection shall deposit with the Registrar such sum as a security for the costs of the proposed inspection as the Registrar may require.

(3) All expenses of or incidental to an inspection shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers, or former members or officers, of the society in such proportions as the Registrar may direct.

(4) A person appointed under this section may make copies of any books of the society and take extracts therefrom at all reasonable hours at the registered office of the society or at any place where the books are kept.

(5) The Registrar shall communicate the results of an inspection to the applicants and to the society.

61. Power to appoint inspector

(1) The Registrar may, with the consent of the Cabinet Secretary, on the application of one-tenth of the whole number of members of a building society or of fifty members, whichever is the less, either—

- (a) appoint an inspector to examine into and report on the affairs of the society; or
- (b) call a special meeting of the society.

(2) An application under this section shall be supported by such evidence as the Registrar may direct for the purpose of showing that the applicants have good reason for requiring the inspection to be made or the meeting to be called and that they are not actuated by malicious motives in their application.

(3) Notice of the application shall be given to the society as the Registrar may direct.

(4) The Registrar shall require the applicants to give security for the costs of the proposed inspection or meeting before the inspector is appointed or the meeting is called.

(5) All expenses of and incidental to an inspection or meeting shall be defrayed by the applicants or out of the funds of the society, or by the members or officers, or former members or officers, of the society in such proportions as the Registrar may direct.

(6) An inspector appointed under this section may require the production of all or any of the books, accounts, securities and documents of the society, and may examine on oath its officers, members, agents and servants in relation to its business, and may administer an oath accordingly.

(7) The Registrar may direct at what time and place a special meeting under this section is to be held, and what matters are to be discussed and determined at the meeting, and the meeting shall have all the powers of a meeting called according to the rules of the society, and shall in all cases have power to appoint its own chairman, notwithstanding any rule of the society to the contrary.

(8) The Registrar may, without application by members, but with the consent of the Cabinet Secretary given on each occasion, exercise the powers given by this section—

- (a) where a building society has, for two months, after notice, failed to make a return required by this Act;
- (b) where a building society has, for two months, after notice, failed to correct or complete any such return;
- (c) where evidence is furnished by statutory declaration of not less than three members of a building society of facts which, in the opinion of the Registrar, calls for investigation:

Provided that the Registrar shall forthwith, on receipt of the declaration, send a copy thereof to the society, and the society may, within fourteen days, give the Registrar an explanatory statement in writing by way of reply thereto.

62. Power to forbid invitations for subscriptions, etc.

(1) If, with respect to a building society, the Registrar considers it expedient to do so in the interests of persons who have invested or deposited or may invest or deposit money with the society, he may by order direct that, unless and until the order is revoked, no invitation to subscribe for, or to acquire or offer to acquire, securities or to lend or deposit money shall be made by or on behalf of the society.

(2) Before making an order under this section, the Registrar shall serve on the society a written notice stating his intention to make the order, and shall consider any representations with respect to the proposed order made to him by the society within the period of thirty days from the date of the service of the notice and, if the society so requests, afford it an opportunity of being heard by him within that period.

(3) An order made under subsection (1) may be revoked by a subsequent order of the Registrar.

(4) If an invitation is made in contravention of an order made under subsection (1), the person by whom the invitation is so made shall be guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand shillings, or to both.

63. Power to suspend or cancel registration

(1) Where the Registrar is satisfied that a certificate of registration has been obtained for a building society by fraud or mistake, or that any such society exists for an illegal purpose, or has wilfully and after notice from the Registrar violated any of the provisions of this Act, or has ceased to exist, the Registrar may by notice in writing cancel the registration of the society or suspend the registration thereof for a term not exceeding three months, and may renew the suspension from time to time for a similar period.

(2) The Registrar shall, before cancelling or suspending the registration of a building society under powers conferred by subsection (1), give to the society not less than two months' previous notice in writing, specifying briefly the ground of the proposed cancellation or suspension, and shall, as soon as practicable after the cancellation or suspension takes place, cause notice thereof to be published in the *Gazette* and in such one or more newspapers (if any) as he may determine.

(3) A building society may appeal to the High Court against the cancellation or suspension of its registration, and thereupon the Court may, if it thinks it just so to do, set aside the cancellation or suspension.

(4) The Registrar may also at the request of a building society, evidenced in such manner as he may direct, cancel the registration of the society.

(5) A building society whose registration has been cancelled or suspended shall from the time of cancellation or suspension (but in the case of suspension only while the suspension lasts, and in any case subject to the right of appeal given by this section) cease absolutely to enjoy the privileges conferred by this Act, but without prejudice to any liability incurred by the society, and any such liability may be enforced against the society as if the cancellation or suspension had not taken place.

PART XA – INSPECTION, PRUDENTIAL REGULATIONS AND
COLLECTION OF INFORMATION BY CENTRAL BANK OF KENYA

[Act No. 4 of 1999, s. 96.]

63A. Inspection by Central Bank

Notwithstanding the powers vested in the Registrar by this Act, the Central Bank or any person authorized by the Central Bank in writing may, and if so directed by the Cabinet Secretary for the time being responsible for finance shall, cause an inspection to be made of a building society and where such an inspection is made the building society shall furnish all books, accounts, documents, or information to the Central Bank or any person authorized by the Central Bank.

[Act No. 12 of 1984, Sch., Act No. 13 of 1987, s. 9, Act No. 4 of 1999, s. 96.]

63B. Central Bank may issue orders after inspection

(1) If it is found after an inspection under section 63A that the affairs of the building society concerned are being conducted in a manner detrimental to the interests of the members or the interests of the building society, the Central Bank may issue directions to the building society requiring it to take such corrective action as the Central Bank considers to be necessary or to discontinue the harmful practices or procedures.

(2) The Central Bank may issue directions to a building society generally for the better carrying out of its functions under this Part and in particular, with respect to—

- (a) the standards to be adhered to by a building society in the conduct of its business in Kenya or in any country where a branch or subsidiary of the building society is located; and
- (b) guidelines to be adhered to by building societies in order to maintain a stable and efficient banking and financial system.

(3) No directions shall be issued under subsections (1) or (2) unless the building society has been given an opportunity to present its views.

(4) A building society which receives directions under subsections (1) or (2) shall, within the period specified in the directions, comply with the directions and show to the Central Bank that it has done so.

(5) A person who fails to comply with any direction under this section commits an offence and shall, in addition to the penalty prescribed under section 71, be liable to such additional penalty as may be prescribed, for each day or part thereof during which the offence continues.

[Act No. 12 of 1984, Sch., Act No. 4 of 1999, s. 97.]

63C. Registrar to be notified of inspection

The Central Bank shall notify the Registrar of an inspection undertaken by it under this Part, of any directions issued by it and the fact that a building society has complied with the directions.

63D. Powers upon audit or inspection report

Where an auditor's report under section 15 or an inspection report under this Part reveals that a building society conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder, or in any manner detrimental to or not in the best interests of its members, depositors or members of the public, the Central Bank may—

- (i) restrict, suspend or prohibit the payment of dividends by the building society;
- (ii) prohibit the conversion of any profits of the building society into capital;

- (iii) direct the suspension or removal of any officer involved in such conduct from the service of the building society;
- (iv) require the building society to reconstitute its board of directors in accordance with the criteria set out by the Central Bank; or
- (v) withhold branch or other corporate approvals with respect to such building society.

[Act No. 4 of 1999, s. 98.]

63E. Collection of information by Central Bank of Kenya

The Central Bank shall collect such data and other information as may be necessary to enable it to maintain supervision and surveillance of the affairs of building societies and the protection of their members and depositors and, for this purpose, may require building societies to submit statistical and other returns on a periodic basis in addition to any other returns required by law.

[Act No. 4 of 1999, s. 99.]

63F. Furnishing of information

The Central Bank may require any building society to furnish to it, at such time and in such manner as it may direct, such information as the Central Bank may reasonably require for the proper discharge of its functions under this Act.

[Act No. 4 of 1999, s. 99.]

63G. Cabinet Secretary may require further information

The Cabinet Secretary may require the Central Bank or building society to furnish to him at such time and in such manner as he may direct, such information as the Minister may require.

[Act No. 4 of 1999, s. 99.]

63H. Time to furnish information

Where the Central Bank or a building society is required to furnish information under this Part, it shall furnish that information and any other supplementary material that may be required as a result of that information, within the period specified in this Part or the relevant direction, or within such reasonable period thereafter as may be agreed.

[Act No. 4 of 1999, s. 99.]

63I. Publication of information

(1) The Central Bank or the Cabinet Secretary may publish in whole or in part, at such times and in such manner as it or he thinks fit, any information furnished to it or him under this Act:

Provided that the information so furnished shall not be published if it would disclose the financial affairs of any person, unless the consent in writing of that person has first been given.

(2) Except as provided in this Act, no person shall disclose or publish any information, which comes into his possession as a result of the performance of his duties or responsibilities under this Act and, if he does so, he shall, for purposes of section 71 be deemed to have contravened provisions of this Act.

[Act No. 4 of 1999, s. 99.]

63J. Powers of Central Bank to intervene in management, liquidations, etc.

Notwithstanding any other provision of this Act to the contrary, the provisions of sections 34, 34A, 35 and 35A of the Banking Act shall, *mutatis mutandis*, apply to a building society registered in accordance with this Act.

[Act No. 7 of 2001, s. 10.]

63K. Contributions to the Deposit Protection Fund

The provisions of Part VIII of the Banking Act shall *mutatis mutandis*, apply to a building society registered in accordance with this Act.

[Act No. 7 of 2001, s. 10.]

PART XI – DISSOLUTION AND WINDING-UP**64.**

[Repealed by Act No. 7 of 2001, s. 11.]

65.

[Repealed by Act No. 7 of 2001, s. 11.]

66.

[Repealed by Act No. 7 of 2001, s. 11.]

67.

[Repealed by Act No. 7 of 2001, s. 11.]

68.

[Repealed by Act No. 7 of 2001, s. 11.]

69.

[Repealed by Act No. 7 of 2001, s. 11.]

70.

[Repealed by Act No. 7 of 2001, s. 11.]

PART XII – OFFENCES**71. Prohibition of unregistered building societies**

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

(2) No society, association, partnership or company shall commence or carry on business in Kenya under or by any name which includes the word "Building Society" unless it is registered and licensed in terms of this Act.

(3) The Registrar may at any time make an inspection or cause an inspection to be made of the books, accounts and records of any society, association, partnership or company for the purpose of determining whether it is carrying on the business of a building society or not.

(4) A society, association, partnership or company which contravenes the provisions of subsection (1) or subsection (2) shall be guilty of an offence and liable to a fine not exceeding one hundred thousand shillings.

(5) Where a society, association, partnership or company contravenes subsection (1) or subsection (2), every person who at the time of the contravention was an officer, partner or director or was concerned in the management of the

society, association, partnership or company, or was acting, or purporting to act, in such a capacity, shall also be guilty of an offence unless he proves—

- (a) that through no act or omission on his part, he did not know that the contravention was intended or about to take place or was taking place; or
- (b) that he took all reasonable steps to prevent the contravention taking place.

(6) A person who is guilty of an offence under subsection (5) shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both.

[Act No. 16 of 1985, s. 10.]

72. Withholding or misapplying property of a building society an offence

(1) If a person by false representation or imposition obtains possession of any moneys, securities, books, papers or other effects of a building society, or having them in possession withholds or misapplies them or wilfully applies any part thereof to purposes other than those expressed or directed in the rules of the society and authorized by this Act, he shall be guilty of an offence and liable to a fine not exceeding five thousand shillings and to be ordered to deliver up to the society all such moneys, securities, books, papers or other effects and to repay the amount of money applied improperly, and in default of delivery of effects or repayment of the amount of money shall be liable to imprisonment for a term not exceeding six months.

(2) Proceedings under subsection (1) may be taken at the instance of—

- (a) the society;
- (b) a member authorized by the society or by the board of directors or by the Registrar; or
- (c) the Registrar.

73. False Statements

If a person makes a false statement or order or allows a false statement to be made in any document which is required by this Act or any regulations thereunder to be sent to the Registrar, or which the person expects will be published, knowing the 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 imprisonment for a term not exceeding six months.

74. Offences

If a building society neglects or refuses—

- (a) to give any notice, send any return or document or do or allow to be done anything which the society is by this Act or any regulations thereunder required to give, send, do or allow to be done; or
- (b) to do any act or furnish any information required for the purposes of this Act by the Registrar or by an inspector, the society,

and every officer thereof bound by the rules of the society to fulfil the duty whereof a breach has been so committed, and, if there is no such officer, then every director, unless it appears that he was ignorant of or attempted to prevent

the breach, shall be guilty of an offence and, unless a special penalty is provided by this Act, liable to a fine not exceeding five thousand shillings.

[Act No. 16 of 1985, s. 11.]

PART XIII – FOREIGN BUILDING SOCIETIES

75. Registration of foreign building societies

(1) A building society registered or incorporated outside Kenya, the rules of which—

- (a) contain substantially the same matters which in the case of building societies to be registered in Kenya are required by section 10 to be set out; and
- (b) contain no provision which is incompatible with any provision of this Act; and
- (c) expressly authorize the society to carry on business outside the country in which it is registered or incorporated,

may apply for registration under this Act.

(2) An application shall be in the prescribed form and shall be accompanied by—

- (a) a copy of its rules and a copy of the certificate of registration or incorporation, each certified in such manner as may be prescribed, and, if they are not written in the English language, certified translations of them; and
- (b) a statement of the situation and the postal address of its registered or chief office in the country of its registration or incorporation; and
- (c) a statement of the situation and of the postal address of its head office in Kenya; and
- (d) a copy of its latest annual statement and account; and
- (e) a statement of the names and addresses of the directors.

(3) The Registrar may, subject to section 9, allow or refuse an application for registration made under subsection (1).

(4) A person aggrieved by the refusal of the Registrar to register a building society under this section may within one month, or such extended period as the Cabinet Secretary may allow, from the date of refusal, appeal to the Cabinet Secretary, whose decision shall be final.

(5) Where the Registrar allows an application, he shall enter the prescribed particulars relating to the society in the register, and thereupon the society shall, subject to section 23, become entitled to hold land and to take mortgages of land in Kenya.

(6) The Registrar shall issue a certificate of registration to every building society registered under this section.

(7) No building society registered or incorporated outside Kenya shall commence business in Kenya as a building society unless it is registered and licensed under this Act.

[Act No. 16 of 1985, s. 12.]

76. Provisions of Act generally to apply to foreign building societies

(1) The provisions of this Act (including Part IIA and Schedules 1 and 3) relating to building societies registered under section 6 shall apply to building societies registered under section 75, and in addition thereto the following special provisions shall apply to every building society registered under section 75—

- (a) the society shall maintain an office and a postal address in Kenya; and
- (b) the society shall keep in English separate records and books of account in respect of its business in Kenya, which records and books shall be kept at the society's principal place of business in Kenya; and
- (c) the society shall prepare in English a separate account and statements in respect of its business in Kenya, which shall be in the form required in the case of a building society registered in Kenya with such modifications as the Registrar may allow, as well as a consolidated account and statement; and
- (d) the society shall not, save with the prior approval of the Cabinet Secretary, invest outside Kenya and moneys raised in Kenya in excess of one-fifth of the capital assets for the time being of the society in Kenya; and
- (e) the society shall show in all advertisements and announcements and on all documents issued by it the place where it was originally registered or incorporated.

(2) The Cabinet Secretary may, by order, either generally or in any particular case, exempt a society registered under section 75 from all or any of the provisions of this Act, or direct that such provisions of this Act as are specified in the order shall, in their application to the society, be modified in such manner as may be provided therein.

[Act No. 16 of 1985, s. 13.]

PART XIV – ORDERS, RULES AND REGULATIONS**77. Orders, rules and regulations**

(1) The Cabinet Secretary may by order—

- (a) fix the maximum rate of interest which may be paid or charged by building societies in respect of the borrowing or advancing of money;
- (b) require building societies to hold such amount in cash or on deposit or in investments in accordance with section 25 as may be specified in the order as security for the prompt repayment of shares, deposits, loans and overdrafts and for the payment of interest accrued thereon.

(2) The Chief Justice may make rules of court for regulating proceedings before the High Court, and applications and appeals thereto, under the provisions of this Act, and for the fees to be paid in respect thereof.

(3) Subject to subsections (1) and (2), the Cabinet Secretary may make regulations prescribing anything required to be prescribed under this Act, and for the better carrying into effect of the provisions of this Act, and, without prejudice to the generality of the foregoing, regulations may provide for the procedure in the registry of building societies, the hours in which the registry is to open for business, the forms to be used and the fees to be paid in respect of any matter under this Act required, permitted or entitled to be done.

Building Societies

(4) Without prejudice to the generality of subsection (3), the Cabinet Secretary may, in regulations, prescribe penalties to be paid by building societies which fail or refuse to comply with any directions of the Central Bank under this Act, which shall not exceed one million shillings in the case of a building society or one hundred thousand shillings, in the case of a natural person, and may prescribe additional penalties not exceeding ten thousand shillings in each case for each day or part thereof during which such failure or refusal continues.

[Act No. 27 of 1961, Sch., L.N. 462/1963, Act No. 4 of 1999, s. 100.]

FIRST SCHEDULE

[s. 12B(1)]

ANNUAL LICENCE FEES

[Act No. 16 of 1985, Act No. 8 of 1991, Act No. 6 of 1994, s. 79, Act No. 13 of 1995, s. 95.]

	K.Sh.
1. For every building society	100,000
2. Additionally	
(i) for every branch office in Nairobi area and/or in all municipalities	40,000
(ii) in respect of each branch within a town council area	20,000
(iii) in respect of each branch within an urban council area	6,000
(iv) for a branch office in other places	No fee
3. On application to establish a building society or establish a branch office	5,000

SECOND SCHEDULE

[s. 24(4)]

**CLASSES OF ADDITIONAL SECURITY WHICH
MAY BE TAKEN INTO ACCOUNT IN DETERMINING
THE AMOUNT OF ADVANCES TO MEMBERS**

[Act No. 9 of 1967, Sch., Act No. 29 of 1967, Sch.]

1. A charge upon a policy of life assurance.
2. A guarantee given, whether in pursuance of a continuing arrangement or not, by the Government, a local authority or an insurance company, or any other person approved by the Cabinet Secretary.
3. A charge given by the member upon money deposited with the society or upon any stocks, shares or securities for the time being authorized by law for the investment of trust moneys.
4. A guarantee, not being a guarantee given in pursuance of a continuing arrangement, accepted by the society with the written consent of the member and supported by a charge upon money deposited with the society or upon any such stocks, shares or securities as aforesaid.
5. A charge upon money deposited with the society, being a charge which is given in accordance with arrangements which are approved by the Registrar and which

provide that the society shall also take, as further security for each advance in respect of which such a charge is given to the society, a guarantee given by an insurance company.

THIRD SCHEDULE

TRANSITIONAL PROVISIONS FOR PART IIA

Spent

FOURTH SCHEDULE

[s. 12B(4)]

CRITERIA FOR DETERMINING PROFESSIONAL AND
MORAL SUITABILITY OF PERSONS PROPOSED
TO MANAGE OR CONTROL BUILDING SOCIETIES

[Act No. 4 of 1999, s. 101.]

(a) In order to determine, for the purpose of this Act, the professional and moral suitability of persons proposed to manage or control an institution, the Cabinet Secretary or Central Bank, as the case may be, shall have regard to the following qualities, in so far as they are reasonably determinable, of the person concerned—

- (i) his general probity;
- (ii) his competence and soundness of judgment for the fulfillment of the responsibilities of the office in question; and
- (iii) the diligence with which the person concerned is likely to fulfil those responsibilities.

(b) For the purposes of and without prejudice to the generality of the provisions of paragraph (a), the Cabinet Secretary or the Central Bank, as the case may be, may have regard to the previous conduct and activities of the person concerned in the business or financial matters and, in particular, to any evidence that such person—

- (i) has been convicted of the offence of fraud or any other offence of which dishonesty is an element;
- (ii) has contravened the provisions of any law designed for the protection of members of the public against financial loss due to the dishonesty or incompetence of, or malpractices by, persons engaged in the provision of banking, insurance, investment or other financial services;
- (iii) was a director of an institution or a building society that has been liquidated or is under liquidation or statutory management;
- (iv) has taken part in any business practices that in the opinion of the Cabinet Secretary or the Central Bank, as the case may be, were fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business;
- (v) has taken part in or been associated with any other business practices as would, or has otherwise conducted himself in such manner as to cast doubt on his competence and soundness of judgment.

Building Societies

(c) The Cabinet Secretary may request any person to furnish such additional information as may be necessary in determining the professional or moral suitability of that person under section 12B.
