



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$0,90

WINDHOEK — 11 November 1994

No. 967

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 207 Promulgation of Building Societies Amendment Act, 1994 (Act 25 of 1994), of the Parliament	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 207

1994

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 25 of 1994: Building Societies Amendment Act, 1994.

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Building Societies Act, 1986, so as to regulate the amalgamation of building societies and the transfer of their assets and liabilities; and to provide for matters incidental thereto.

(Signed by the President on 27 October 1994)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Substitution of heading of Chapter VII of Act 2 of 1986.

1. The following heading is hereby substituted for the heading of Chapter VII of the Building Societies Act, 1986:

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

Insertion of section 52A in Chapter VII of Act 2 of 1986.

2. The following section is hereby inserted before section 53 in Chapter VII of the Building Societies Act, 1986:

“Amalgamation and transfer of assets and liabilities.

52A. (1) If the prior written approval of the Minister has been obtained therefor -

- (a) two or more societies may amalgamate to become one society;
- (b) a society may transfer all or part of its assets and liabilities to another society or to a bank.

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

(2) The proposed agreement embodying the terms and conditions of any amalgamation or transfer of assets and liabilities as contemplated in subsection (1), shall be furnished in advance to the registrar who shall submit such proposed agreement to the Minister, together with any recommendations which the registrar considers necessary or expedient to make in connection therewith.

(3) The Minister may, with due regard to any recommendations made by the registrar, and subject to subsection (4) -

- (a) grant approval for the proposed amalgamation or transfer on the terms and conditions as set out in the proposed agreement; or
- (b) if the Minister considers it necessary that any modifications should be made to such terms and conditions, refer the proposed agreement back to the parties concerned for reconsideration in the light of the modifications suggested by the Minister.

(4) The Minister shall not grant his or her approval for any amalgamation or transfer of assets and liabilities under subsection (3)(a), unless the Minister is satisfied -

- (a) that such transaction will not be detrimental to the public interest or cause undue hardship to the members of any of the parties involved in the proposed amalgamation or transfer of assets and liabilities, as the case may be; and

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

(b) in the case of an amalgamation of societies or the transfer of assets and liabilities from one society to another society, that the proposed agreement specifically provides that there shall be no division of the profits or of any of the reserves of the societies concerned among their members, but subject to subsection (15).

(5) No transaction involving an amalgamation or transfer of assets and liabilities contemplated in subsection (1) shall be of any force and effect unless -

(a) the Minister has granted his or her approval therefor under subsection (3)(a); and

(b) the provisions of the agreement for the contemplated amalgamation or transfer is confirmed by special resolution of the members or shareholders, as the case may be, of each of the parties involved in the amalgamation or transfer.

(6) The notice convening a special general meeting for the confirmation by special resolution of any such amalgamation or transfer, as required by subsection (5)(b), shall contain or have attached to it the complete terms and conditions of the relevant agreement as approved by the Minister, whether with or without modifications.

(7) Notice of the passing of the special resolution as required by subsection (5)(b), together with a copy of such resolution and the full terms and conditions of the proposed amalgamation or transfer, duly certified by two directors and the secretary of each of the parties concerned, shall be sent by each of those parties to the registrar and shall be registered by him or her.

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

(8) The amalgamation or transfer shall take place upon the terms and conditions set forth in such resolution.

(9) Upon registration by the registrar of the appropriate notices referred to in subsection (7) -

(a) in the case of an amalgamation of societies -

(i) the individual societies involved in the amalgamation shall be deemed to be dissolved and the registrar shall cancel their registration, register the new society as a building society and issue to such society the relevant certificate of registration in accordance with subsection (10); and

(ii) all the assets and liabilities of the societies involved in the amalgamation shall become the assets and liabilities of the new society registered in their stead;

(b) in the case of a transfer of assets and liabilities of a society to another society or to a bank -

(i) where all the assets and liabilities of the society are transferred, that society shall be deemed to be dissolved and its registration shall be cancelled by the registrar;

(ii) all the assets and liabilities of the society giving transfer which are included in such transfer shall become the assets and liabilities of the society or the bank to which they are transferred.

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

(10) A registration in terms of subsection (9)(a)(i) shall -

- (a) where all the parties to the amalgamation in question were finally registered as societies, be a final registration;
- (b) where all the parties to the amalgamation in question were provisionally registered as societies, be a provisional registration; or
- (c) where some of the parties to the amalgamation were finally registered and some parties were provisionally registered as societies, be either a final or provisional registration, as the registrar may determine.

(11) The provisional or final registration of a society in terms of subsection (9)(a)(i) and a certificate of provisional or final registration issued to a society in terms of that subsection, shall be deemed to be a provisional or final registration, as the case may be, of such society, and a certificate of provisional or final registration, as the case may be, issued, in terms of section 4.

(12) The liquidator of a society which is being wound up voluntarily or by the court, or the judicial manager of a society, may transfer all the assets and liabilities of the society being wound up or under judicial management to another society or a bank: Provided that subsections (5)(b) and (6) shall not apply to a society which is being wound up.

(13) Where a new society registered as a result of an amalgamation of societies or a society or bank which has acquired assets as a result of a transfer of assets and liabilities of a society, produces to the Registrar of Deeds -

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

- (a) any mortgage bond or the title deed of any immovable property registered in his or her office which is transferred to that amalgamated society in accordance with the provisions of subsection (9)(a)(ii) or, as the case may be, to that society or bank in accordance with the provisions of subsection (9)(b)(ii); and
- (b) a certificate by the registrar of the registration by him or her of the notice of amalgamation or transfer, as the case may be,

the Registrar of Deeds shall make such endorsements upon such mortgage bond or title deed and effect such entries in his or her registers as are necessary to record the transfer thereof to the amalgamated society or, as the case may be, the society or the bank taking over the said assets and liabilities.

(14) The amalgamation of societies or the transfer of assets and liabilities of a society, in accordance with the provisions of this section, shall not affect the rights of any creditor of any societies involved in the amalgamation or, as the case may be, any creditor of the society transferring assets and liabilities in respect of any liability which is included in such transfer, and any such right may be enforced against the amalgamated society or, as the case may be, the society or bank taking over that liability, as if such right had originally accrued against the amalgamated society or the society or bank receiving transfer.

(15) The provisions of paragraph (b) of subsection (4) shall not be construed as preventing the making of reasonable provision out of the profits

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

of a society for compensation to its officers (other than directors, alternate directors, local directors or members of local committees) for any resulting loss of office or for payment in recognition of past services rendered by such officers.

(16) In the case of a transfer of assets and liabilities of a society to a bank, provision may, subject to subsection (18), be made in the relevant transfer agreement for compensation to members of the society, taking into account the unimpaired reserves of the society, by way of either a cash payment or a right to take up shares in the transferee bank or its controlling company, and provision may be so made for compensation to officers of the society *mutatis mutandis* in accordance with the provisions of subsection (15).

(17) The basis on which and conditions subject to which compensation contemplated in subsection (16) to members shall take place, and also the amount of the unimpaired reserves of the society on the date of the latest return submitted to the registrar in terms of section 32, and, in the case of cash payments, also the estimated total amount of such payments, shall be furnished in the relevant transfer agreement.

(18) A resolution to offer compensation referred to in subsection (16) to members, shall be approved by both parties to the relevant transfer agreement, by separate special resolution, and shall provide that -

- (a) only a member who on the day immediately before the date determined for the transfer of assets and liabilities held shares in the transferor society and

**BUILDING SOCIETIES
AMENDMENT ACT, 1994**

which shares had been issued to such a member at least 12 months before that date, or which had been paid for out of the proceeds of shares redeemed by that society during that 12 months, shall qualify for such compensation; and

(b) such a member shall nevertheless not be entitled to the compensation if he or she -

(i) is not resident in Namibia;
or

(ii) is a body corporate which is not incorporated in Namibia.

(19) Upon the transfer of assets and liabilities from a society to a bank, all investments in the form of shares issued by the society which have not yet been redeemed before the date of the transfer of its assets and liabilities, and which are included in such transfer, shall be deemed to be fixed deposits with the transferee bank.

(20) The conditions and any tax benefit which immediately before the date of transfer of assets and liabilities were applicable in respect of an investment in the form of shares referred to in subsection (19) shall, notwithstanding the provisions of that subsection, but subject to the provisions of the Income Tax Act, 1981 (Act 24 of 1981), continue to apply to the investment for a period of 4 years as from the date of transfer, if it is not redeemed sooner."

Short title.

3. This Act shall be called the Building Societies Amendment Act, 1994.
