

BUILDING SOCIETIES (AMENDMENT) ACT, 2014

No. 3



of 2014

ARRANGEMENT OF SECTIONS

SECTION

1. Short title and commencement
2. Insertion of sections 67A, 67B, 67C and 67D in Cap. 42:03

An Act to amend the Building Societies Act.

Date of Assent: 23.01.2014

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Building Societies (Amendment) Act, 2014, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Building Societies Act (referred to as “the Act”) is amended by inserting, immediately after section 67, the following new sections —

Insertion of sections 67A, 67B, 67C and 67D in Cap. 42:03

“Conversion of a society into a company
Cap. 42:01
67A. (1) A society may, in accordance with the Companies Act, be converted into a company incorporated under the Companies Act (referred to as a “successor company”).

(2) In order for a conversion under subsection (1) to take place, a society shall —

- (a) pass a special resolution of its members, in accordance with the society’s rules —
 - (i) authorising the proposed conversion,
 - (ii) approving the conditions under which it is to take place, and
 - (iii) approving the proposed constitution of the successor company, which proposed constitution shall comply with section 67B; and
- (b) obtain the approval of the Registrar, in writing, for the conversion.

(3) The conditions to be met for a conversion under subsection (1) shall be such as may be prescribed.

(4) The conditions to be met for a conversion under subsection (1) may include provision for —

- (a) part of the funds of the society to be distributed among the members, directors or officers of the society; and
- (b) other rights in relation to shares in the successor company to be conferred on, the members, directors or officers of the society.

(5) Where a society is converted into a company in accordance with this section, the approval of the Registrar under subsection (2) (b) and the conditions authorised by the society under subsection (2) (a) (ii) shall, in so far as they provide for the conferral of rights on the members, directors or officers of the society, be enforceable as if they had been the subject of an agreement between the society, the successor company and those members, directors or officers.

Protective provisions

67B. (1) Where a special resolution has been passed in accordance with section 67A, the successor company shall not, at any time during the protective period —

- (a) offer for sale, or invite subscriptions for, any shares in the successor company or allot or agree to allot any such shares with a view to their being offered for sale; or
- (b) allot or agree to allot any share in the successor company; or
- (c) register a transfer of shares in the successor company,

if the effect of the offer, the invitation, the allotment, the agreement to allot or the registration of the transfer would be that more shares than the permitted proportion would be held by any one person.

(2) The constitution of the successor company shall include such provisions to ensure that the successor company does not offer, invite subscription for, allot, agree to allot or register transfers of, shares in contravention of subsection (1), and no alteration to those provisions may be made by the successor company during the protective period.

(3) Any provision, including any altered provision, of the successor company's constitution which is to any extent inconsistent with subsection (1) shall, to that extent, be void.

(4) Any allotment or registration of a transfer of shares in contravention of subsection (1) shall be void.

(5) This section shall cease to apply to a successor company —

- (a) if a resolution to that effect is passed by the requisite majority of the members of the successor company; or
- (b) on the expiry of the protective period.

(6) If this section ceases to apply to a successor company in accordance with subsection (5), any provision included in the successor company's constitution in accordance with subsection (2) shall cease to have effect.

(7) For the purposes of this section —

- (a) "shares" includes a reference to —
 - (i) any warrant or other instrument entitling the holder to subscribe for shares, and
 - (ii) any certificate or other instrument issued by or on behalf of the successor company and conferring a right to acquire shares otherwise than by subscription;
- (b) shares held by a person in a fiduciary capacity shall be treated as not held by him;
- (c) shares held by a person as nominee for another shall be treated as held by the other; and

(d) shares held by any persons acting in concert shall be treated as held by each of them.

(8) For the purposes of —

(a) subsection (1), any shares to which an instrument under subsection (7) (a) relates shall be deemed to be held by the holder of the instrument; and

(b) subsection (7) (c), shares shall be regarded as held as nominee for another if any voting rights attaching to them are exercisable only on his instructions or with his consent or concurrence.

(9) In this section —

“acting in concert” means co-operating for a common purpose by two or more persons pursuant to an agreement, arrangement or understanding, whether formal or informal, between them;

“the permitted proportion” means, in relation to shares in the successor company, 15 per cent of the successor company’s issued share capital;

“the protective period” means the period beginning with the date of the successor company’s registration and ending ten years after the date of the successor company’s registration or, if this section ceases to apply to the successor company, ending on the date on which it so ceases; and

“the requisite majority” means a majority in number of the members having the right to attend and vote at a general meeting of the successor company, being a majority together holding not less than 75 per cent in nominal value of the shares giving that right.

Tax
Exemptions
Cap. 52:01
Cap. 53:01

67C. (1) Notwithstanding the provisions of the Income Tax Act and the Transfer Duty Act, no transfer duty or any other tax shall be payable in respect of anything done in order to give effect to the conversion of a building society into a company under section 67A, or the registration of the successor company’s constitution.

Cap. 52:01
Cap. 50:03
Cap. 50:01

(2) Subject to subsection (1), a successor company shall not be exempt from any tax, duty, rate or levy imposed by the provisions of the Income Tax Act, Value Added Tax Act or Customs and Excise Duty Act.

Licences
Cap. 46:04

67D. (1) A successor company shall apply under the Banking Act for a licence authorising the successor company to transact any banking business:

Provided that, from the date of conversion, the successor company shall continue to undertake the business for which the successor company was doing before the conversion date for a period of six months, or until the issue of a banking licence under the Banking Act.

(2) The successor company shall not be exempt from holding any other licence required by law, for other services specified in its constitution.

PASSED by the National Assembly this 12th day of December, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.