

## **FRIENDLY SOCIETIES ACT 25 OF 1956**

[ASSENTED TO 28 APRIL 1956]

[DATE OF COMMENCEMENT: 31 DECEMBER 1959]

*(Signed by the President)*

**as amended by**

Finance Act 81 of 1957

Finance Act 80 of 1959

Inspection of Financial institutions Act 68 of 1962

Friendly Societies Amendment Act 60 of 1963

Friendly Societies Amendment Act 67 of 1965

Financial Institutions Amendment Act 65 of 1968

Financial Institutions Amendment Act 91 of 1972

Medical Schemes Amendment Act 43 of 1975

Financial institutions Amendment Act 101 of 1976

Financial institutions Amendment Act 103 of 1979

Financial Institutions Amendment Act 99 of 1980

Financial institutions Amendment Act 86 of 1984

Financial Institutions Amendment Act 51 of 1988

Legal Succession to the South African Transport Services Act 9 of 1989

Financial Institutions Amendment Act 53 of 1989

Financial Institutions Second Amendment Act 54 of 1989

Short-term Insurance Act 4 of 1998

Long-term Insurance Act 5 of 1998

Namibia Financial Institutions Supervisory Authority Act 3 of 2001

### **ACT**

**To provide for the registration, incorporation, regulation and dissolution of friendly societies and for matters incidental thereto.**

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## CHAPTER I

### ADMINISTRATION AND APPLICATION OF ACT AND INTERPRETATION OF TERMS (ss 1-4A)

#### 1 Definitions

(1) In this Act, unless the context indicates otherwise-

**"actuary"** means any Fellow of an institute, faculty, society or chapter of actuaries approved by the Minister;

**"assets"**, in relation to a friendly society, means the assets of that society as they would be reflected in any statement of its assets prepared in accordance with the requirements set out in section *twenty-five*;

**"court"** means a provincial or local division of the Supreme Court of South Africa, and includes the High Court of South-West Africa;

**"financial year"**, in relation to a society, means each period of twelve months ending on the thirty-first day of December, at the end of which the balance of its accounts is required to be struck in terms of its rules, or such other period as may on any particular occasion be determined by the registrar at the request of the society;

**"friendly society"** means-

- (a) any association of persons established for any of the objects specified in section *two*; or
- (b) any business carried on under a scheme or arrangement instituted for any of those objects,

and includes any central society referred to in section *thirty-nine*, whether or not it is liable to provide any benefits mentioned in section *two*, and any central society, association or business as aforesaid which is or may become liable for any such benefits, whether or not it continues to admit or to collect contributions from members;

**"Gazette"** in relation to a society carrying on business in the Territory, means the *Official Gazette* of the Territory;

**"Insurance Act"** means the Insurance Act, 1943 (Act 27 of 1943);

**"liabilities"**, in relation to a friendly society, means the liabilities of that society as they would be reflected in any statement of its liabilities prepared in accordance with the requirements set out in section *twenty-four*;

**"market value"**, in relation to any asset of a society, means the market value in the Union or if such value cannot be ascertained, the price which would be obtained on a sale in the Union between a willing seller and a willing purchaser as estimated by the society and approved by the registrar, or, where the registrar does not approve of any estimate made by a society, the value estimated by the registrar;

**"member"**, in relation to a friendly society, means any person who contributes to the society in order to obtain any benefit referred to in section *two*, either for himself or for any other

person mentioned in that section, and includes any association which contributes to a central society referred to in section *thirty-nine*;

"**Minister**" means the Minister of Finance;

"**officer**", in relation to a society, means any member of a committee appointed to manage the affairs of the society, or any individual so appointed, or any manager, principal officer, treasurer, clerk or other agent or employee of the society, but does not include an auditor appointed under section *eleven*;

"**person**" includes any committee appointed to manage the affairs of a society;

"**prescribed**" means prescribed by or under this Act;

"**principal officer**" means the officer referred to in section *ten*;

"**registered**" in relation to a society, means registered or provisionally registered under section *five*, and "registration" has a corresponding meaning;

"**registered office**" means the registered office referred to in section *nine*;

"**registrar**" means the registrar of friendly societies referred to in section 4;

[Definition of "registrar" substituted by sec 25 of Act 101 of 1976 and by sec 37 of Act 3 of 2001.]

"**regulation**" means a regulation made and in force under this Act;

"**rules**" means the rules of a society, and includes-

- (a) the act, charter, deed of settlement, memorandum of association, or other document by which the society is constituted;
- (b) the articles of association or other rules for the conduct of the business of the society; and
- (c) the provisions relating to the benefits which may be granted by and the contributions which may become payable to the society;

"**society**" means a friendly society

"**Territory**" means the Territory of South-West Africa;

"**Union**" includes the Territory;

"**valuator**" means an actuary or any other person who, in the opinion of the registrar, has sufficient actuarial knowledge to perform the duties required of a valuator in terms of this Act.

(2) For the purpose of the application of the provisions of this Act in relation to a society which is a friendly society in terms of paragraph (b) of the definition of "friendly society" in subsection (1), any reference in this Act to a friendly society shall be construed as a reference to that society or to the person or body in control of the affairs of that society, as the circumstances may require.

## **2 Objects for which friendly societies may be established**

(1) A friendly society may, subject to the provisions of subsection (2), be established for one or more of the following objects, namely-

- (a) the relief or maintenance during minority, old age, widowhood, sickness or other infirmity, whether bodily or mental, of members or their husbands, wives, widows, widowers, children or other relatives or dependants;
- (b) the granting of annuities, whether immediate or deferred, to members or to nominees of members, or the endowment of members or nominees of members;
- (c) .....

[Para (c) deleted by sec 31 of Act 43 of 1975.]

- (d) the insurance of a sum of money to be paid or other benefit to be provided-
  - (i) on birth of a member's child; or
  - (ii) on the death of a member or any other person mentioned in paragraph (a) or in the form of an endowment insurance on the life of a member or such a person; or

- (iii) towards the expenses in connection with the death or funeral of any member or any such person; or
- (iv) during a period of confined mourning by a member or such a person;
- (e) the insurance against fire or other contingencies of the implements of the trade or calling of any member;
- (f) the provision of a sum of money on a member's leaving the service of his employer owing to dismissal, resignation or otherwise, unless in the opinion of the registrar the principal object is the provision of a sum of money on a member's leaving such service because of marriage or intended marriage;
- (g) the relief or maintenance of members, or any group of members, when unemployed or in distressed circumstances otherwise than in consequence of the existence of a strike or lockout as defined in section *one* of the Industrial Conciliation Act, 1956 (Act 28 of 1956);

[Para (g) amended by sec 19 of Act 103 of 1979.]

- (h) the provision of sums of money for the advancement of the education or training of members or of the children of members;
  - (i) such other business as the Governor-General may by proclamation in the *Gazette* declare to be business in respect of which a friendly society may be established.
- (2) No association or business shall be regarded as a friendly society-
- (a) if none of the persons entitled to the benefits specified in subsection (1) contributes to such association or business; or
  - (b) if any of its activities fall within the objects of a pension fund organization as set out in paragraph (a) or (b) of the definition of "pension fund organization" in section *one* of the Pension Funds Act, 1956; or
  - (c) if in terms of its rules each member is entitled at all times to withdraw the full amount of his contributions, subject to such notice as may be prescribed in its rules; or
  - (d) if the benefits mentioned in subsection (1) are provided exclusively by way of loans which in terms of its rules must be repaid.

### **3 Application of Act**

- (1) The provisions of this Act shall not apply in relation to any friendly society-
- (a) which has been established in terms of an agreement published or deemed to have been published under section *forty-eight* of the Labour Relations Act, 1956 (Act 28 of 1956), except that such society shall from time to time furnish the registrar with such statistical information as may be prescribed by the Minister;
  - (b) of which the aggregate value of income does not exceed R100 000 per annum, except that such society shall comply with the provisions of any regulation that may be made in relation to it.

[Subsec (1) amended by sec 20 of Act 103 of 1979 and substituted by sec 22 of Act 54 of 1989.]

- (2) If the registrar is satisfied-
- (a) that the aggregate value of the income likely to be received by a friendly society which has applied for registration under this Act, will not in general exceed during any year an amount of five hundred pounds, he may by notice in writing addressed to that society, and on such conditions as may be specified in that notice, exempt that society from the operation of all or any of the provisions of this Act;
  - (b) that a friendly society which has so applied for registration operates exclusively by means of policies of insurance, issued by a person lawfully carrying on insurance business within the meaning of the insurance Act, he may by notice in writing addressed

to that society, and on such conditions as may be specified in that notice, exempt that society from the operation of all or any of the provisions of this Act;

- (c) that the affairs of any friendly society which has so applied for registration, are subject to such a measure of control issuing from any department of the State, any provincial administration and the Administration of the Territory, as to ensure that the society will as regards its financial strength and the conduct of its business conform to standards at least as high as those imposed under this Act in respect of registered societies (other than provisionally registered societies), he shall in writing exempt the society on such conditions as he may specify from the operation of the provisions of this Act.

[Para (c) amended by sec 36(6) of Act 9 of 1989.]

(3) The registrar may at any time by notice in writing addressed to the society concerned, withdraw any exemption granted under paragraph (a), (b) or (c) of subsection (2) in respect of that society if he ceases to be satisfied as provided in the appropriate paragraph.

#### **4 Registrar of friendly societies**

The person appointed in terms of section 5 of the Namibia Financial Institutions Supervisory Authority Act, 2001 as the chief executive officer of the Namibia Financial Institutions Supervisory Authority shall be the registrar of friendly societies.

[Sec 4 amended by sec 26 of Act 101 of 1976 and substituted by sec 37 of Act 3 of 2001.]

#### **4A .....**

[Sec 4A inserted by sec 7 of Act 51 of 1988. and deleted by sec 37 of Act 3 of 2001.]

### **CHAPTER II**

## **REGISTRATION AND INCORPORATION (ss 5-8)**

### **5 Registration of friendly societies**

(1) Every friendly society shall apply to the registrar for registration under this Act.

(2) An application under subsection (1) shall be accompanied by particulars of the name and address of the person charged with the management of the affairs of the society to which the application relates, and a copy of the rules of such society, together with a certificate by a valuator as to the soundness of such rules from a financial point of view or, if no valuator has been employed, such information regarding their financial soundness as the applicant may possess, and the registration fee prescribed by regulation, and, in the case of a society in existence at the commencement of this Act-

- (a) a statement in detail of the revenue and expenditure of the society in question for the last financial year for which accounts have been prepared, and a copy of its balance sheet as at the end of that year; and
- (b) a statement showing in detail the latest valuation of assets and liabilities made by a valuator, including particulars as to the principles applied in making such valuation, or, if no such valuation has been made, such particulars regarding the financial condition of the society as the applicant may possess.

[Subsec (2) amended by sec 20 of Act 86 of 1984.]

(3) Upon receipt of the documents referred to in subsections (1) and (2) the registrar shall, if the society has complied with such requirements as the registrar may have prescribed and he is satisfied that the registration of the society is desirable in the public interest, register the society provisionally and forward to the applicant a certificate of provisional registration.

[Subsec (3) substituted by sec 1(a) of Act 60 of 1973.]

(4) If after considering any such application, in respect of a society which has been provisionally registered, the registrar is satisfied-

- (a) that the rules of the society are not inconsistent with this Act and are based on sound

- financial principles;
- (b) that the methods according to which business is or is proposed to be transacted by the society are not undesirable;
- (c) that the society is in a financially sound condition; and
- (d) that, having regard to all the circumstances, the rules of the society are not unduly inequitable as between different members or groups of members;

he shall register the society as a friendly society and transmit to the applicant a certificate of registration as well as a copy of the rules of the society bearing an endorsement of the date of registration, and thereupon the society shall cease to be provisionally registered.

[Subsec (4) substituted by sec 1(b) of Act 60 of 1963.]

(5) If after considering any such application, the registrar is not satisfied as regards all the matters in respect of which he is in terms of subsection (4) required to be satisfied he shall in writing indicate to the applicant the requirements to be complied with in order that he may be so satisfied.

(5)*bis* (a) When the registrar indicates in terms of subsection (5) to the applicant any requirements to be complied with the registrar may at the same time determine a period within which such requirements shall be complied with.

(b) The registrar may at any time before the expiration of any period determined under this subsection modify any requirements indicated to the applicant in terms of subsection (5) or determine a different period in substitution of the existing period (which shall not be shorter than the unexpired portion of the existing period) within which the requirements, or the requirements as modified in terms of this paragraph, shall be complied with.

[Subsec (5)*bis* inserted by sec 1(c) of Act 60 of 1963.]

(6) The provisional registration of a society under subsection (3) shall be valid for a period of five years, but may, where the registrar is satisfied that the society has made all reasonable efforts to meet his requirements, as indicated in terms of this section, and the requirements prescribed in this Act, in the discretion of the registrar, and subject to such conditions and limitations as he may consider desirable, be renewed from time to time for periods not exceeding twelve months at a time and not exceeding in the aggregate-

(a) in the case of a society which has complied with the requirements set out in subsection (4), except the requirements set out in paragraph (c) of that subsection, and which may in the opinion of the registrar be expected to attain a sound financial condition within a reasonable period-

(i) if the principal object or one of the principal objects of the society is the insurance of sums of money payable on the death of members or other persons, or the provision of endowment insurance on the lives of members or other persons, a period ending twenty years after the commencement of this Act; or

(ii) if none of the objects mentioned in subparagraph (i) constitutes a principal object of the society, a period ending twelve years after such commencement;

(b) in any other case a period of five years.

[Subsec (6) substituted by sec 1 of Act 67 of 1965.]

(7) .....

[Subsec (7) amended by sec 1(d) of Act 60 of 1963 and deleted by sec 1 of Act 67 of 1965.]

(8) Whenever a society which is provisionally registered under this section has complied with all the requirements specified in subsection (4), the registrar shall register the society and transmit to it a certificate of registration as well as a copy of its rules with the date of registration duly endorsed thereon, and thereupon the society shall cease to be provisionally registered.

(9) The rules of a society shall not be regarded as based on sound financial principles if they exclude from actuarial scrutiny any part of the business of the society which in the opinion of the registrar should be subject to such scrutiny, unless the registrar is satisfied that the expense and practical difficulties likely to be involved in such scrutiny would out-weigh the value of the advantages to be derived therefrom.

(10) No society shall be registered or provisionally registered under this Act except as provided in this section.

## **6 Societies not to be registered under identical or similar names**

(1) No friendly society shall be registered under a name identical with that under which any other society has already been registered or under a name so closely resembling such a name as in the opinion of the registrar to be likely to mislead.

(2) Whenever the registrar has under consideration applications for registration from two or more societies bearing identical names or names so closely resembling each other as in his opinion to be likely to mislead, he shall register under the name under which application for registration has been made-

- (a) where only one of the applications was lodged with the registrar-
  - (i) in the case of societies which were in existence at the commencement of this Act, within six months after such commencement; or
  - (ii) in the case of societies established after such commencement, within six months after the date on which they were established,

the society in respect of which the application was so lodged;

- (b) where two or more of the applications were so lodged, the society which adopted the name under which it has applied for registration before any of the other societies concerned had adopted the name under which such other society has so applied; and
- (c) where none of the applications was so lodged, the society whose application was first lodged with the registrar; and if any of the societies concerned has been so registered, none of the remaining societies shall be registered except under a name which the registrar has approved.

(3) The provisions of subsections (2), (3) and (4) of section 30 of the Banks Act, 1965 (Act 23 of 1965), shall *mutatis mutandis* apply in relation to any change in the name of a society under this section as if the society were a banking institution within the meaning of that Act and as if the change had effected a transfer of the assets and liabilities of the society to another society known by the name under which the registration of the society has been effected.

[Subsec (3) amended by sec 21 of Act 103 of 1979.]

## **7 Effect of registration of friendly society**

(1) Upon the registration under this Act-

- (a) of a society which is a friendly society in terms of paragraph (a) of the definition of "friendly Society" in subsection (1) of section *one*, the society shall, under the name by which it is so registered, and in so far as its activities are concerned with any of the objects set out in section *two*, become a body corporate capable of suing and being sued in its corporate name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its rules;
- (b) of a society which is a friendly society in terms of paragraph (b) of the said definition, all the assets, rights, liabilities and obligations pertaining to the business of the society shall, notwithstanding anything contained in any law or in the memorandum, articles of association, constitution or rules of any body corporate or unincorporate having control of the business of the society, be deemed to be assets, rights, liabilities and obligations



of the society to the exclusion of any other person, and no person shall have any claim on the assets or rights or be responsible for any liabilities or obligations of the society, except in so far as the claim has arisen or the responsibility has been incurred in connection with transactions relating to the business of the society;

- (c) of any friendly society, the assets, rights, liabilities and obligations of the society (including any assets held in trust for the society by any person) as existing immediately prior to its registration, shall vest in and devolve upon the registered society, without any formal transfer or cession.

(1)*bis* The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset or right which in terms of paragraph (c) of subsection (1) vests in or devolves upon a registered society, shall, upon production to him by the society of its certificate of registration or of provisional registration, as the case may be, and of the deed or other document aforesaid, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are necessary by reason of such vesting or devolution.

[Subsec (1)*bis* inserted by sec 16 of Act 81 of 1957.]

(2) All moneys and assets belonging to a friendly society shall be kept by that society and every society shall maintain such books of account and other records as may be necessary for the purposes of such society.

## **8 Allocation of assets and liabilities between friendly society and other associated business**

(1) Within twelve months after the registration under this Act of a friendly society the business whereof is or has been carried on by any undertaking as part of or in conjunction with any other business in which the undertaking is or has been engaged, the person having control of the business of that undertaking shall submit to the registrar proposals as to the apportionment of the assets, rights, liabilities and obligations of that undertaking between the society and such other business.

(2) If the proposals mentioned in subsection (1) are not received within the period specified in that subsection the registrar shall prepare proposals to the apportionment of the assets, rights, liabilities and obligations of that undertaking between the society and such business in such a manner as he may with due regard to all the circumstances consider equitable.

(3) The registrar may for the purpose of making any proposals under subsection (2), require any person having control of the undertaking in question, to lodge with him, within such period as he may specify, any information relating to the business or any part of the business which is or has been carried on by that undertaking, including the business of such friendly society, together with such reports by a valuator or (at the discretion of the registrar) by the auditor of that undertaking, as the registrar may direct.

(4) As soon as practicable after having received any proposals under subsection (1) or after having prepared any proposals as provided in subsection (2), the registrar shall transmit a copy thereof to the principal officer of the society and publish at the expense of the society in the *Gazette* and in at least one English and one Afrikaans newspaper circulating in the district in which the head office of the undertaking is situated, a notice-

- (a) indicating that such apportionment is contemplated;
- (b) Stating the place or places where copies of the proposals in question will be available for inspection by interested persons for a period of thirty days from a date specified in the notice; and
- (c) calling upon interested persons to submit to the registrar whatever representations they

may deem necessary within the said period of thirty days.

(5) Upon the expiration of the period mentioned in paragraph (c) of subsection (4), the registrar shall proceed to consider any written representations lodged with him in pursuance of the relevant notice and any oral representations which any person who lodged such written representations or the person having control of the business of the undertaking may desire to submit to him, and shall thereafter approve of the proposals in question as drafted or with such modifications as he may deem necessary.

(6) A decision made by the registrar under subsection (5) shall be binding upon all persons affected thereby.

### **CHAPTER III**

#### **ADMINISTRATION AND POWERS OF REGISTERED SOCIETIES (ss 9-21)**

##### **9 Registered office**

(1) Every registered society shall have a registered office in the Union.

(2) Process in any legal proceedings against any such society may be served by leaving it at the registered office, and in the event of such registered office having ceased to exist, service upon the registrar shall be deemed to be service upon the society.

##### **10 Principal officer**

(1) Every registered society shall have a principal executive officer.

(2) The officer referred to in subsection (1) shall be an individual who is resident in the Union, and if he is absent from the Union or unable for any reason to discharge any duty imposed upon him by any provision of this Act, the society shall, in the manner directed by its rules, appoint another officer within thirty days to be its principal officer.

(3) Within thirty days of the registration of a society under this Act, the person managing the business of the society shall notify the registrar of the name of the principal officer of the society.

(4) Whenever a registered society has appointed a new principal officer, the person managing the business of the society shall within thirty days as from such appointment give notice thereof in writing to the registrar.

##### **11 Appointment, powers and duties of auditor**

(1) Except where the accounts of a society are to be audited by the Controller and Auditor-General or a Provincial Auditor under the provisions of one or other law, every registered society shall in the manner prescribed by its rules appoint an auditor registered under the Public Accountants' and Auditors' Act, 1951, who shall not be an officer of the society: Provided that if an auditor so registered is not readily available the registrar may at the request of the society approve of the appointment of a person nominated by the society, to act as auditor of the society, or if the registrar is not satisfied that the nominated person is suitable to act as auditor of the society, he may appoint as auditor any other person whom he considers suitable.

[Subsec (1) amended by sec 8 of Act 91 of 1972.]

(2) In certifying a statement of liabilities prepared in terms of section *twenty-four* the auditor shall not be deemed to vouch for the correctness of the amounts at which the liabilities were assessed by the valuator in terms of section *twenty-three*.

##### **12 Business which may be carried on**

No registered society shall carry on any business other than the business connected with the objects for which a friendly society may be established as set out in section *two*: Provided that the registrar may approve of a society carrying on such other business on such conditions and for such period as he may determine if the registrar is satisfied that this is necessary in order to safeguard an investment made by the society.

### **13 Matters to be included in rules**

The rules of a friendly society shall be in one of the official languages of the Union and shall contain provision in regard to the following matters, that is to say-

- (a) the name of the society and the situation of its registered office;
- (b) the objects of the society;
- (c) the manner in which funds are to be raised and collected and the purposes for which they are to be applied;
- (d) the various classes (if any) of members and the requirements for admission to membership and the circumstances under which membership is to cease;
- (e) the conditions under which any member or other person may become entitled to any benefit and the nature and extent of any such benefit;
- (f) the fines and forfeitures (if any) to be imposed on any member and the consequences of non-payment of any contribution or fine;
- (g) the appointment, removal from office, powers and remuneration (if any) of officers of the society;
- (h) the powers of investment of funds;
- (i) whether or not any part of the business of the society is subject to actuarial scrutiny, and, if so, which kinds of business are so subject;
- (j) the maintenance of accounts relating to such kinds of business as are subject to actuarial scrutiny separately from accounts relating to any other business;
- (k) whether or not a separate account is to be kept in respect of any particular kind of business other than as required in terms of the preceding paragraph, and, if so, in respect of which kinds;
- (l) if the society is entitled to receive contributions from its members towards the expenses of management, and if such contributions are payable under a separate table, the maintenance of a separate account of such expenses and contributions;
- (m) if separate accounts are kept in respect of any particular kind of business, or in respect of expenses of management and contributions towards such expenses, the circumstances in which and conditions upon which amounts may be transferred from one such account to another;
- (n) the manner of determining profits and losses and of disposing of such profits or providing for such losses;
- (o) the manner in which contracts and other documents binding the society shall be executed;
- (p) the custody of the securities, books, papers and other effects of the society;
- (q) the manner of altering and rescinding any rules, and of making any additional rule;
- (r) the manner of deciding disputes between a member or former member or any person whose claim is derived from a member or former member and the society or any officer of the society;
- (s) in the case of a society with share capital, the amount of such share capital and the division thereof into shares of a fixed amount, whether the liability of a shareholder for the debts of the society is limited or unlimited, the conditions relating to participation in the profits of the society by the shareholders (subject to the condition that such participation shall not in any one year exceed an amount equal to five per cent of the paid-up share capital), the conditions of redemption or repayment of shares, the conditions relating to calls on shares, the manner of transfer and transmission of shares,

- the manner of forfeiture of shares, and the manner of alteration of share capital;
- (t) the appointment of the auditor of the society and the duration of such appointment;
- (u) subject to the provisions of this Act, the manner in which and the circumstances under which a society shall be terminated or dissolved;
- (v) the appointment of a liquidator in the case of a voluntary dissolution;
- (w) the manner of calling the annual general meeting and special general meetings of members, the quorum necessary for the transaction of business at such meetings and the manner of voting thereat;
- (x) such other matters as the registrar may approve.

#### **14 Amendment of rules**

(1) A registered society may, in the manner directed by its rules, alter or rescind any rule or make any additional rule, but no such alteration, rescission or addition shall be valid-

- (a) if it purports to affect any right of a creditor of the society, other than as a member or shareholder thereof; or
- (b) unless it has been approved by the registrar and registered as provided in subsection (4).

(2) Within one month from the date of the passing of a resolution for the alteration or rescission of any rule or for the adoption of any additional rule, a copy of such resolution shall be transmitted by the principal officer to the registrar, together with a certificate signed by the person managing the business of the society to the effect that such resolution has been adopted in accordance with the provisions of the rules of the society.

(3) If any such alteration, rescission or addition affects the financial condition of the society, the principal officer shall also transmit to the registrar a certificate by a valuator as to its financial soundness or, if no valuator has been employed, such information regarding its financial soundness as the society may possess.

(4) If the registrar finds that any such alteration, rescission or addition is not inconsistent with this Act, and is satisfied that-

- (a) it is based on financially sound principles;
- (b) the methods of transacting the business of the society as laid down therein or brought about thereby are not undesirable; and
- (c) it will not, having regard to all the circumstances, bring about undue inequity between different members or groups of members,

he shall register the alteration, rescission or addition and return a copy of the resolution to the principal officer with the date of registration endorsed thereon, and such alteration, rescission or addition, as the case may be, shall take effect as from the date determined by the society concerned or, if no date has been so determined, as from the said date of registration.

(5) A registered society may at any time consolidate its rules, and in such event the principal officer shall forward to the registrar a copy of such consolidated rules and if the registrar is satisfied that the consolidated rules are not substantially different from the existing rules of the society, he shall register such consolidated rules and return a copy thereof to the principal officer with the date of registration endorsed thereon, and such consolidated rules shall thereupon take effect from the date of registration thereof.

#### **15 Binding force of rules**

Subject to the provisions of this Act, the rules of a registered society shall be binding on the society and the members, shareholders and officers thereof, and on any person who claims under the rules, or whose claim is derived from a person so claiming.

#### **16 Membership of minors**

If the rules of a registered society so provide, a minor may be a member, and any such member may, by himself if he has attained the age of sixteen years, or by his parent or guardian if he is under that age, execute all necessary documents and give all necessary acquaintances, but he shall not manage the affairs or be the principal officer of such society.

#### **17 Membership of married women**

A married woman, whether under marital power or not, may without her husband's consent be a member of a society, and may without assistance execute all necessary documents and give all necessary acquaintances, and any benefit granted to her shall, as between the husband and the wife, be her sole and separate property free from his control, and she shall furthermore, unless otherwise provided by the rules, be qualified to be an officer of a society.

#### **18 Payment of benefits to nominees**

(1) If the rules of a society so provide, and subject to any conditions or limitations that may be specified in the said rules, a member or former member of a society may, by writing under his hand delivered at or sent to the registered office of the society, nominate any person to whom any money payable by the society on the death of such member or former member shall be paid at his deceased, and may from time to time revoke or vary any such nomination by writing under his hand similarly delivered or sent.

(2) On proof of the death of a member or former member referred to in subsection (1), the society concerned shall pay to the nominee of the deceased the amount due and payable to the nominee in terms of the said nomination.

#### **19 Restriction of payments on death of children under fourteen years of age**

(1) No society shall insure the life of a child who is under the age of fourteen years for any sum of money which either alone or together with any amount which to the knowledge of the said society is payable on the death of that child by any other society or by any insurer carrying on insurance business within the meaning of the Insurance Act, exceeds-

- (a) two hundred and fifty rand, if the child is under six years of age; or
- (b) five hundred rand, if the child is six years old or older, but is under fourteen years of age.

[Subsec (1) substituted by sec 27(a) of Act 101 of 1976 and by sec 42 of Act 99 of 1980.]

(2) Where a society or an insurer has insured the life of a child for a benefit not consisting of a sum of money, it shall for the purposes of this section be deemed to have insured the life of that child for a sum of money equal to the value of such benefit.

(3) The provisions of this section shall not be construed so as to prohibit an insurance which provides for the payment, on the death of any child which is under the age of fourteen years, of a sum not exceeding in the aggregate all the contributions paid in respect of such insurance, plus interest on each contribution at a rate not exceeding seven and a half per cent per annum, compounded annually.

[Subsec (3) substituted by sec 27(b) of Act 101 of 1976.]

#### **20 Investments**

(1) Subject to the provisions of this section, a registered society may invest its funds in any manner provided by its rules.

(2) .....

[Subsec (2) amended by sec 15 of Act 80 of 1959 and substituted by sec 28(a) of Act 101 of 1976 and deleted by sec 10 of Act 53 of 1989.]

(3) .....

[Subsec (3) substituted by sec 28(b) of Act 101 of 1976 and deleted by sec 10 of Act 53 of 1989.]

(4) .....

[Subsec (4) deleted by sec 10 of Act 53 of 1989]

(5) A registered friendly society may, if its rules so provide-

- (a) make donations to any charitable, religious, provident, sporting or cultural institution or to any hospital, nursing home, infirmary or home for aged persons;
- (b) grant loans secured by first mortgages of immovable property, by way of investment of its funds, to any of its members if the mortgaged property is property on which a dwelling house has been or is to be erected: Provided that such loans shall in no case exceed seventy-five per cent of the market value of the property to be acquired;
- (c) .....

[Para (c) deleted by sec 32 of Act 43 of 1975.]

- (d) contribute to any other friendly society registered under this Act or any fund of any kind whatsoever which is conducted for the benefit of the employees of the said registered society or take out and pay for insurance policies on the lives of employees of the said registered society for the benefit of such employees or their dependants.

(6) The registrar may, under exceptional circumstances, and on such conditions and for such periods as he may determine, temporarily exempt any society from compliance with any provision of subsection (2) or (5).

[Subsec (6) substituted by sec 28(c) of Act 101 of 1976 and sec 10 of Act 53 of 1989.]

## **21 Amalgamations and transfers**

(1) No transaction involving the amalgamation of any business carried on by a registered society with any business carried on by any other person (irrespective of whether that other person is or is not a registered society) or the transfer of any business from a registered society to any other person or the transfer of any business from any other person to a registered society, shall be of any force or effect unless the amalgamation or transfer is carried out in accordance with the provisions of this section.

(2) The registered society shall deposit with the registrar a copy of the scheme for the proposed transaction (in this section referred to as the scheme), including a copy of every actuarial or other statement taken into account for the purposes of the scheme, and shall furnish the registrar with particulars of the voting at any meeting of its members or shareholders at which the scheme was considered and with such additional information as he may require: Provided that if two or more registered societies are concerned in the proposed transaction, only one such society need furnish a copy of the scheme as aforesaid.

(3) If any party to the proposed transaction is not a registered society, but carries on insurance business in the Union within the meaning of the Insurance Act, the registrar shall deposit with the Registrar of Insurance the copy of the scheme, particulars and information referred to in subsection (2), and the provisions of subsections (5) to (10), inclusive, of this section shall not apply, but the provisions of section *twenty five* of the Insurance Act shall apply as if the society were an insurer registered under the Insurance Act, and as if the members of the society were the owners of policies of insurance issued by the society.

(4) If any party to the proposed transaction is not a registered society and does not carry on insurance business in the Union within the meaning of the Insurance Act, the registrar may require that party to furnish him with any information which is in possession of that party and which the registrar may specify.

(5) The registrar may, in his discretion, require any or all of the following provisions to be fulfilled, namely-

- (a) a report on the scheme to be drawn up by an independent valuator or other competent person nominated by the registrar at the expense of those parties and furnished to the

- registrar who shall send a copy thereof to each of the parties to the proposed transaction;
- (b) each of the said parties to send a copy of the scheme and of the report (if any) referred to in paragraph (a) to every member, shareholder and creditor of that party, or to such only of those members, shareholders and creditors as the registrar may direct;
  - (c) the parties to the proposed transaction to publish particulars thereof, in a form approved by the registrar, in the *Gazette* and in such newspaper or newspapers as the registrar may direct.

(6) Copies of the scheme and of the report (if any) referred to in paragraph (a) of subsection (5) shall, for such period of not less than twenty-one days as the registrar may specify, be made available for the inspection of any member, shareholder or creditor of any party to the proposed transaction-

- (a) at the registered office of any registered society concerned; and
- (b) at the registered office or other principal place of business in the Union of any other party.

(7) When the requirements of subsection (6) have been complied with, the registrar shall consider the scheme, and thereafter he may-

- (a) confirm the scheme; or
- (b) suggest that the parties to the proposed transaction modify the scheme in certain respects, and if they so modify the scheme he may confirm the scheme as modified; or
- (c) decline to confirm the scheme.

(8) If the registrar has declined to confirm the scheme, the parties to the proposed transaction may after not less than fourteen days' notice to the registrar, apply to the court for confirmation of the scheme.

(9) The registrar shall be entitled to be heard personally or by a representative at any such application, and the court may confirm the scheme as submitted to it or with such modifications as the court may think fit or decline to confirm the scheme.

(10) A scheme confirmed by the registrar or the court in accordance with this section shall be binding on all persons concerned, and shall have effect notwithstanding any conflicting provision contained in the rules of any registered society concerned or in the memorandum or other document under which any other party to the transaction is constituted, or in the articles of association or other rules of such party.

(11) When the scheme has been confirmed by the registrar or the court, the person controlling the amalgamated business or the person to whom any business has been transferred in terms of the transaction, as the case may be, shall within fourteen days after such confirmation deposit with the registrar-

- (a) a declaration, duly signed in accordance with the provisions of section *twenty-six*, on behalf of each of the parties to the transaction, that to the best of their belief every payment made or to be made or other valuable consideration given or to be given to any person whatsoever on account of the amalgamation or transfer is fully set forth in the scheme; and
- (b) if the scheme has been confirmed by the court, a certified copy of the scheme as confirmed and the order of court confirming the scheme.

(12) Whenever a scheme is confirmed in accordance with the provisions of this section, the relevant assets and liabilities of the parties to the amalgamation shall vest in and become binding upon the amalgamated body or, as the case may be, the relevant assets and liabilities of the party effecting the transfer shall vest in and become binding upon the party to which transfer

is effected.

(13) The officer in charge of a deeds registry in which is registered any deed or other document relating to any asset which is transferred in accordance with the provisions of subsection (12), shall, upon production to him by the person concerned of such deed or other document and of a certificate by the registrar of the confirmation of the scheme of amalgamation or of transfer, as the case may be, without payment of transfer duty, stamp duty, registration fees or charges, make the endorsements upon such deed or document and the alterations in his registers that are rendered necessary by reason of the amalgamation or transfer.

[Subsec (13) substituted by sec 17 of Act 81 of 1957.]

(14) A transaction effected in terms of this section shall not deprive any creditor of a party thereto (other than in his capacity as a member or a shareholder of such party) of any right or remedy which he had immediately prior to that date against any party to the transaction or against any member or shareholder or officer of such party.

#### **CHAPTER IV**

#### **DOCUMENTS TO BE DEPOSITED WITH REGISTRAR (ss 22-30)**

#### **22 Accounts**

(1) Every registered society shall, within six months as from the expiration of every financial year, furnish to the registrar-

- (a) a revenue account showing the revenue and expenditure for that year including the expenses of management of the society and any contributions towards such expenses: Provided that, if the rules of the society require a separate account to be maintained for a particular kind of business or in respect of the said expenses and contributions, the aforesaid revenue account shall be divided into sections in such a way as to show separately the transactions of the society in respect of that particular kind of business, or, as the case may be, in respect of the said expenses and contributions; and
- (b) a balance sheet showing the financial position of the society at the close of that year.

(2) Every registered society shall, when furnishing to the registrar the documents referred to in subsection (1), also furnish to the registrar-

- (a) a copy of any special report by the auditor relating to the activities of the society during the financial year to which the documents relate;
- (b) a copy of any annual report that the society may have issued to its members or shareholders in respect of the said financial year; and
- (c) a copy of any other statement that the society may have presented to its members or shareholders in respect of any of its activities during such financial year.

#### **22A Registrar may order submission of accounts and other documents in connection with control and administration of societies**

(1) The registrar may by notice in writing direct any person carrying on the business of the control and administration of the affairs of a registered society to furnish him within a period stated in such notice, or within such further period as the registrar may allow, with-

- (a) a revenue account showing the income derived from and the expenses incurred in connection with such business;
  - (b) any other account, statement or other document relating to such business,
- and with such further information in connection with such business as he may require.

(2) The registrar may-

- (a) determine the period to which a revenue account, other account, statement or other document referred to in subsection (1) shall relate;
- (b) require that such revenue account, other account, statement or other document shall



- relate to the affairs of a particular registered society or to the affairs of all registered societies of which the affairs are controlled and administered by the said person;
- (c) require that such revenue account, other account, statement or other document shall be duly audited.

[Sec 22A inserted by sec 29 of Act 101 of 1976.]

### **23 Valuations by a valuator in respect of business subject to actuarial scrutiny**

(1) Every registered society carrying on any kind of business which in terms of its rules is subject to actuarial scrutiny shall, once at least in every five years, cause a valuation of the liabilities of the society in respect of that kind of business, in so far as such liabilities are capable of actuarial valuation, to be made by a valuator, and shall deposit with the registrar a copy of the valuation duly certified by the valuator.

(2) Such valuation shall be made in respect of the position as at the expiration of a financial year, and a copy thereof shall be deposited with the registrar within twelve months from the close of that year.

(3) In the case of a society which was carrying on friendly society business at the commencement of this Act and has complied with the provisions of subsection (1) of section *five*, the first valuation shall be made in respect of the position as at the expiration of the financial year which commenced after the date of commencement of this Act: Provided that-

- (a) in special circumstances the society may, with the permission of the registrar, defer such first valuation for such period, not exceeding three years, as the registrar may determine; and
- (b) if the society has furnished a statement in terms of paragraph (b) of subsection (2) of section *five*, showing the results of a valuation of the liabilities and assets of the society, the registrar may direct that the first valuation under this section shall be made in respect of the position as at a date subsequent to the expiration of the said financial year, but not more than five years after the date to which the said statement relates.

(4) In the case of a society other than a society mentioned in subsection (3), the first valuation shall be made in respect of the position as at the expiration of the fifth financial year which is completed after the date of registration, or as at the expiration of such previous financial year as the society may select.

(5) Notwithstanding anything contained in the preceding subsections, the registrar may, with the consent of the Minister, and after not less than one month's notice in writing to any registered society, require that society to cause such a valuation to be made in respect of the position as at the expiration of any financial year, if the registrar is of opinion that a valuation would show that any kind of business of the society is not in a sound financial condition.

(6) A valuation made by a valuator in terms of any of the preceding subsections shall include particulars, set out separately in respect of each kind of business for which a separate account is required by the rules of the society, of the amount of the liabilities and contingent liabilities of each kind of business, together with a description of the actuarial basis employed in making such valuation.

(7) Whenever a registered society deposits with the registrar a copy of a valuation made by a valuator in terms of this section, it shall also deposit with the registrar a certificate by the person managing the business of the society and by the principal officer that to the best of their knowledge and belief the information furnished to the valuator for the purposes of the valuation was correct and complete in every material respect.

### **24 Statement of liabilities**

(1) Every registered society shall periodically prepare a statement of all its liabilities at

the close of a financial year, and shall deposit such statement with the registrar within six months from the close of that year.

(2) Such statement shall be prepared-

- (a) in the case of a society to which the provisions of section *twenty-three* apply, on the occasions when a valuation by a valuator is made in terms of that section; and
- (b) in the case of any other society annually.

(3) The statement of liabilities shall include-

- (a) the liabilities and contingent liabilities under contracts between the society and its members, including claims under such contracts which have been intimated but not paid;
- (b) a record of any pledge, hypothecation or other encumbrance of the assets of the society;
- (c) the amount of the share capital which has been paid-up;
- (d) the amount of any liability for taxes for the year concerned, and in the absence of a completed assessment the estimated amount of such taxes; and
- (e) any other liabilities of the society.

(4) Notwithstanding anything contained in subsections (1) and (3), a liability or contingent liability which is covered by reinsurance shall not be shown as a liability on the statement if the reinsurance has been effected with-

- (a) an insurer authorized to carry on insurance business under the Insurance Act; or
- (b) a registered society, including (with the consent of the registrar) a provisionally registered society.

(5) All liabilities and contingent liabilities undertaken and entered into by way of reinsurance shall be included in the statement.

(6)(a) If any of the liabilities or contingent liabilities to be included in the statement in accordance with the preceding subsections are of indeterminate amount, and have not been valued by a valuator in terms of section *twenty-three*, the society concerned shall request the registrar to determine the basis upon which they shall be valued, and any determination so made by the registrar shall be binding upon that society.

(b) The registrar may recover from the society concerned all expenses necessarily incurred in making a determination under paragraph (a).

(7) So far as may be practicable, the liabilities shall be separately stated in respect of each kind of business for which a separate account is required by the rules of the society.

## **25 Statement of assets**

(1) Every registered society shall prepare annually a statement of its assets at the close of the financial year, and shall deposit such statement with the registrar within six months from the close of that year: Provided that the registrar may, if he is satisfied that none of the objects of this Act would be thereby prejudiced, exempt from the provisions of this section a society to which the provisions of section *twenty-three* apply, on the occasions other than those on which a valuation by a valuator is made in terms of that section and may at any time withdraw any such exemption which he has previously granted if he is no longer satisfied as aforesaid.

(2) Any asset represented by a claim which is overdue shall be shown as a separate asset.

(3) No expenses of administration, organization or business extension, and no purchase price of a business (apart from the value of any property belonging thereto) or of a goodwill or any item of a similar nature, shall be included as an asset.

(4) No asset shall be valued above its market value.

(5) Full particulars of each asset, including the market value thereof, shall be furnished:

Provided that if compliance with the requirements of this subsection by a particular society would result in unduly voluminous returns, the society concerned may group various classes of assets together, or otherwise abridge the statement in such manner as the registrar may approve.

(6) A full explanation shall be included in the statement of the methods and bases adopted in ascertaining the market values of the various kinds of assets, including a statement as to whether or not such market values include allowances for interest, dividends or rent accrued since the last date on which interest, dividends or rent fell due.

## **26 Requirements in regard to documents to be deposited with registrar**

(1) A registered society shall be deemed not to have complied with any provision of this Act, which imposes upon such society the obligation to furnish to the registrar a document prepared by the society, unless such document is signed by the principal officer and one other person authorized in accordance with the rules of the society to sign documents.

(2) If any person (other than an auditor or valuator) who is not a natural person, is required by any provision of this Act to sign any document which is to be furnished to the registrar, such document shall be signed on behalf of such person as follows, that is to say-

- (a) if such person is a committee of individuals, by the person for the time being at the head of the committee and by one other member thereof;
- (b) if such person is an association of persons, by the person who is for the time being at the head of the board of directors or other committee controlling such association, and by one other member of such board or committee;
- (c) in any other case by persons designated by the registrar, who exercise any control over the business of the said person.

(3) A registered society shall be deemed not to have complied with the applicable provisions of subsection (1) of section *twenty-two* or section *twenty-four* or *twenty five* unless any revenue account, balance sheet, statement of liabilities or statement of assets required to be submitted under one or other of those provisions is certified by the auditor of the society.

(4) Any person who is required in terms of any provision of this Act to furnish to the registrar-

- (a) any original document, shall also furnish such additional copies thereof, not exceeding three in number, as may be prescribed by regulation or as the registrar may require;
- (b) a copy of any document, shall furnish one copy thereof certified as correct-
  - (i) in the case of a registered society, by its principal officer; and
  - (ii) in any other case, by the person by whom such copy is required to be furnished,together with so many additional copies, not exceeding three, as may be prescribed by regulation or as the registrar may require.

## **27 Registrar may reject returns**

If the registrar is of the opinion that any revenue account or balance sheet furnished by a registered society in terms of subsection (1) of section *twenty-two*, or any statement of liabilities or statement of assets furnished by a registered society in terms of section *twenty-four* or *twenty-five*, is not in accordance with the provisions of this Act or does not correctly reflect the revenue and expenditure or financial position (as the case may be) of the society, he may reject the document in question, and in that event-

- (a) he shall notify the society concerned of the reasons for such rejection; and
- (b) the society shall be deemed not to have furnished the said document to the registrar, but the registrar may in such case apply the provisions of section *forty-four* even if the period concerned has expired before application is made for extension.

## **28 Registrar may require additional particulars in case of certain applications and returns**

- (1) If the registrar is of opinion that-
- (a) any application for registration of a society or of an alteration or rescission of rules or of an additional rule; or
  - (b) any return or scheme relating to the financial condition of a society,
- does not disclose sufficient information to enable him to make the necessary decision, the person concerned shall furnish such additional particulars as the registrar may deem necessary.
- (2) If the registrar is of opinion that a certificate or special report by a valuator or by the auditor of a society is necessary in regard to any matter set out in subsection (1), the person concerned shall furnish such certificate or report as the registrar may require.

## **29 Inspection of documents**

- (1) Upon payment of the fees prescribed by regulation any person may inspect at the office of the registrar any document referred to in section *forty-six* and make a copy thereof or take extracts therefrom or obtain from the registrar a copy thereof or extract therefrom.
- (2) The registrar may exempt any person from the obligation to pay fees under this section, if he is satisfied that the inspection, copy or extract in question is desired for the purpose of furthering some public interest.
- (3) The registrar shall without charge furnish any applicant therefor with particulars of the address of the registered office and the name of the principal officer of any registered society.

## **30 Effect of registrar's certificate on documents**

Every document which purports to have been certified by the registrar to be a document deposited at his office under the provisions of this Act, or to be a copy of such a document, shall *prima facie* be deemed to be such a document, or a copy thereof, and every such copy shall be admissible in evidence as if it were the original document.

## **CHAPTER V**

## **ENQUIRIES AND INVESTIGATIONS APPLICATIONS TO COURT CANCELLATION OR SUSPENSION OF REGISTRATION AND DISSOLUTION OF SOCIETIES (ss 31-38)**

### **31 Enquiries**

The registrar may address enquiries to any registered society in relation to any matter connected with its business or transactions, and it shall be the duty of the society to reply in writing thereto within a period of thirty days as from the date upon which the registrar addressed the enquiry to it or within such further period as the registrar may allow.

### **32 Powers of inspection**

(1) In addition to the powers and duties conferred or imposed upon him by this Act, the registrar shall have all the powers and duties conferred or imposed upon him by the Inspection of Financial Institutions Act, 1962.

(2) Any reference in this Act to an inspection or investigation made under this section shall be construed as a reference to an inspection made under the Inspection of Financial Institutions Act, 1962.

[Sec 32 substituted by sec 11(1) of Act 68 of 1962.]

### **33 Applications to court**

(1) The registrar may, with the consent of the Minister, in regard to any registered society, apply to the court for an order in terms of paragraph (c), (d) or (e) of subsection (3), and a registered society may, in regard to itself, apply to the court for an order in terms of paragraph (b), (d) or (e) of that subsection, if the registrar or the society is of the opinion that it is desirable, because the society is not in a sound financial condition or for any other reason, that such an

order be made in regard to the society: Provided that a society shall not make such an application except by leave of the court, and the court shall not grant such leave unless the society has given security to an amount specified by the court for the payment of the costs of the application and of any opposition thereto, and has established *prima facie* the desirability of the order for which it wishes to apply.

(2) Any creditor of a registered society who is unable to obtain payment of his claim after recourse to the ordinary process of law may, in regard to such society, make an application to the court for an order in terms of paragraph (b), (d) or (e) of subsection (3), and the proviso to subsection (1) shall apply *mutatis mutandis* in regard to such an application.

(3) Upon any application in terms of either of the preceding subsections, the court may-

- (a) refuse the application; or
- (b) order that an investigation be made in terms of section *thirty-two*, and may issue such directions regarding such investigation as the court may deem desirable; or
- (c) order that the rules of the society relating to the appointment, powers, remuneration and removal from office of the person managing the business of the society, or relating to such other matter as the court may regard as appropriate, be altered in a manner to be specified in such order; or
- (d) order that the society be placed under judicial management in terms of section *thirty-four*; or
- (e) order that the whole or any part of the business of the society be wound up in terms of section *thirty-five*.

(4) In exercising its discretion under subsection (3), the court shall consider the equitable interests of the members of the society (or of the several classes of members if there is more than one such class) and of any other person who has rendered or who intends to render financial assistance to the society, and, subject to such consideration as aforesaid, shall make such order as it deems most advantageous to the members of the society.

(5) When a court has made an order in terms of paragraph (b) of subsection (3) in regard to a society, it may at any time thereafter make an order in terms of paragraph (c), (d) or (e) of the subsection or of subsection (3) of section *thirty-six* in regard to that society, and when a court has made an order in terms of paragraph (d) of subsection (3) in regard to a society it may at any time thereafter make an order in terms of paragraph (e) of that subsection or of subsection (3) of section *thirty-six*, in regard to that society.

(6) Notwithstanding any conflicting provision contained in the rules of the society, an order of the court made in terms of paragraph (c) of subsection (3) shall take effect as from any date specified for that purpose in the order, or if no date has been so specified, as from the date of the order, and thereupon the said rules shall be deemed to have been amended in the manner specified by the court.

(7) Unless the court otherwise orders, the costs of the registrar in or in connection with an application in terms of this section shall be paid by the society and shall be a first charge upon the assets of such society.

(8) A registered society shall not be placed under judicial management or wound up or dissolved otherwise than under the provisions of this Act.

### **34 Judicial management**

(1) An order of the court in terms of paragraph (d) of subsection (3) of section *thirty-three* shall be subject to the provisions contained in the following subsections.

(2) The court shall appoint a judicial manager, who shall receive such remuneration as

the court may direct, and the court may at any time cancel the appointment and appoint some other person as judicial manager.

(3) The judicial manager appointed to a society shall take over the whole management of the society, but except with the leave of the court he shall not admit any more members.

(4) The court shall issue such directions to the judicial manager as to his powers and duties as it deems desirable in the circumstances of the case.

(5) The provisions of the Companies Act, 1973 (Act 61 of 1973), shall apply *mutatis mutandis* in connection with the judicial management of a society under this section, in so far as those provisions relate to a judicial management in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any direction issued by the court under this section.

[Subsec (5) substituted by sec 22 of Act 103 of 1979.]

(6) The judicial manager shall act under the control of the court, and he may apply to the court at any time for instructions as to the manner in which he shall carry out the judicial management.

(7) The judicial manager shall give the registrar such information as the latter may require from time to time, and shall, whenever he intends to apply to the court for instructions, report accordingly to the registrar, who shall be entitled to be heard personally or by a representative at any such application, and may himself make an application to the court with reference to the conduct of the judicial management.

(8) The judicial manager shall as soon as possible report to the court which of the following courses he deems most advantageous to members of the society, that is to say-

- (a) the transfer of the whole or of a part of the business of the society to some other person;
- (b) the carrying on of the society with such alterations in benefits, contributions or conditions or in other respects as he may deem advisable;
- (c) the winding-up of the business or of a part of the business of the society;
- (d) such other course as he may deem advisable.

(9) The court shall consider the report of the judicial manager and shall decide upon the course it considers most advantageous to members of the society, and an order containing the decision of the court shall be binding on all persons, and shall have effect notwithstanding anything in the rules of the society: Provided that if the court orders the winding-up of the business or any part of the business of the society, the provisions of section *thirty-six* shall apply to such winding-up.

### **35 Winding-up by the court**

(1) An order of the court in terms of paragraph (e) of subsection (3) of section *thirty-three*, or an order under subsection (9) of section *thirty-four* for the winding-up of a society, shall be subject to the provisions contained in the following subsections.

(2) The provisions of the Companies Act, 1973 (Act 61 of 1973), shall apply *mutatis mutandis* to a winding-up under this section in so far as the said provisions refer to a winding-up by the court in terms of the said Act, and in so far as the said provisions are applicable and not inconsistent with any provision of this Act or with any direction issued by the court under this section.

[Subsec (2) substituted by sec 23(a) of Act 103 of 1979.]

(3) The court may direct that the aforementioned provisions of the Companies Act, 1973, may, for the purposes of the winding-up, be suitably modified in any particular case if the court is satisfied that having regard to the circumstances of the society concerned, it would be impracticable or unnecessarily onerous to comply with the said provisions in every particular,

and that in spite of such modification the interests of the creditors of the society will be sufficiently safeguarded.

[Subsec (3) amended by sec 23(b) of Act 103 of 1979.]

(4) Without prejudice to the powers of the Master who has jurisdiction in respect of any winding-up, the liquidator appointed in terms of subsection (2) shall give the registrar such information as the latter may require from time to time, and shall, whenever he intends to apply to the court for instructions, report accordingly to the registrar who shall be entitled to be heard personally or by a representative at any such application, and may himself make an application to the court with reference to the winding-up.

(5) In the winding-up of the whole or any part of the business of a society the value of the interests of the members or of the various groups of members of the society, and the value of any benefits due by the society to persons other than members, shall be ascertained in such manner as the court may direct.

(6) If, where the court has ordered that the whole business of the society be wound up, the registrar is satisfied that the winding-up of such a society has been completed, he shall cancel the registration of the society and thereupon the society shall be deemed to be dissolved.

### **36 Cancellation or suspension of registration**

(1) The registrar shall cancel the registration of a society-

- (a) on proof to his satisfaction that the society has ceased to exist; or
- (b) if the registrar and the society are agreed that the society was registered by mistake in circumstances not amounting to fraud;

Provided that in the circumstances stated in paragraph (b), the registrar may suspend the registration in lieu of cancelling it, if he is satisfied that by so doing the society will be furnished with an opportunity of rectifying the said mistake in a manner consistent with the provisions of this Act, and if the society does rectify such mistake to the satisfaction of the registrar, the latter shall thereupon reinstate the said registration, as from the date of suspension but if the mistake is not rectified within a period specified by the registrar he shall cancel the registration of the society.

(2) The registrar may apply to the court for the cancellation or suspension of the registration of a society if-

- (a) the society has wilfully and after notice from the registrar violated any provision of this Act; or
- (b) the registrar is of opinion, as the result of an investigation under section *thirty-two*, that the registration should be cancelled or suspended; or
- (c) the society has failed to comply with any requirement of the registrar indicated to it in terms of subsection (5) of section *five* or with any such requirement as modified in terms of paragraph (b) of subsection (5)*bis* of that section within any period determined in terms of the said subsection (5)*bis*.

[Para (c) added by sec 2(b) of Act 60 of 1963.]

(3) The court may cancel the registration of the society or suspend such registration for such period as it thinks fit, and may attach to such cancellation or suspension such conditions as it thinks desirable, or may make any other order which in the circumstances it thinks desirable.

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

### **37 Voluntary or automatic dissolution of society**

(1) If the rules of a registered society provide for the dissolution or termination of such

society upon the expiry of a period or upon the occurrence of an event, or upon a resolution by the members of the society that such society shall be terminated, then upon the expiry of such period, or the occurrence of such event, or the passing of such resolution, such society shall, subject to the provisions of this section, be liquidated in the manner provided by such rules, and the assets of the society shall, subject to the provisions of this section, be distributed in the manner provided by the said rules.

(2) As soon as such period has expired or such event has occurred or such resolution has been passed a person approved by the registrar shall be appointed as liquidator in the manner directed by the rules, or, if the rules do not contain directions as to such appointment, by the person managing the business of the society, and the liquidation shall be deemed to commence as from the date of such approval.

(3) During such liquidation the provisions of this Act shall continue to apply to such society as if the liquidator were the person managing the business of the society.

(4) The liquidator shall as soon as may be deposit with the registrar a preliminary account and a preliminary balance sheet signed and certified by him as correct, showing the assets and liabilities of the society at the commencement of the liquidation and the manner in which it is proposed to realize the assets and to discharge the liabilities, including any liabilities and contingent liabilities to or in respect of members.

(5) The registrar may, in his discretion, direct the liquidator to furnish a report, drawn up by an independent valuator or other competent person nominated by the registrar, upon the preliminary account and preliminary balance sheet.

(6) The preliminary account, preliminary balance sheet and report (if any) referred to in subsection (5), shall lie open at the office of the registrar, and at the registered office of such society, and where the registered office of the society is in any district other than the district wherein the office of the registrar is situate, at the office of the magistrate of the district in which the registered office of the society is situate, for inspection by interested persons for a period of thirty days.

(7) The registrar shall, at the cost of such society, cause to be published in the *Gazette* or in a newspaper circulating in the district in which the registered office of such society is situate, or in both the *Gazette* and such newspaper, a notice stating the period during which and the places at which the preliminary account, preliminary balance sheet and report (if any) shall lie open for inspection as aforesaid, and such notice shall call upon all interested persons who have any objection to the said preliminary account, preliminary balance sheet and report (if any) to lodge their objections in writing with the registrar within a period stated in the notice, not being less than fourteen days as from the last day on which the aforesaid documents lie open for inspection.

(8) If no objections are lodged with the registrar in terms of subsection (7) he shall direct the liquidator to complete the liquidation.

(9) If objections are lodged with the registrar in terms of subsection (7), the registrar may, after considering the said objections, direct the liquidator to amend the preliminary account and preliminary balance sheet, or give such other directions relating to the liquidation as he thinks fit, provided such directions are not inconsistent with the rules of the society, and any such directions shall be binding upon the liquidator.

(10) The liquidator shall, within fourteen days of the receipt by him of any direction of the registrar in terms of subsection (9), post a copy thereof to every member, shareholder and creditor of the society, and the liquidator or any person aggrieved by any such direction of the



registrar may apply by motion to the court within twenty-eight days after such direction has been communicated to the liquidator, for an order to set aside the registrar's decision, and the court may confirm the said decision, or make such order as it thinks fit.

(11) If the registrar is satisfied that his directions, in so far as they have not been varied or set aside by the court, have been given effect to, he shall direct the liquidator to complete the liquidation.

(12) The liquidator shall, within thirty days after the completion of the liquidation, lodge with the registrar a final account and a final balance sheet, signed and certified by him as correct, showing the assets and liabilities of the society at the commencement of the liquidation and the manner in which the assets have been realized and the liabilities, including any liabilities and contingent liabilities to or in respect of members, have been discharged.

(13) The provisions of the Companies Act, 1973 (Act 61 of 1973), in so far as the said provisions relate to a voluntary winding-up in terms of the said Act, and in so far as they are applicable and not inconsistent with any provision of this Act, shall apply *mutatis mutandis* to the dissolution of a society in terms of this section.

[Subsec (13) substituted by sec 24 of Act 103 of 1979.]

(14) All claims against the society shall be proved to the satisfaction of the liquidator, subject to a right of appeal to the court, and the liquidator may require any claim to be made on affidavit.

(15) If the registrar is satisfied that the said account and balance sheet are correct and that the liquidation has been completed, he shall cancel the registration of the society and thereupon such society shall be deemed to be dissolved.

### **38 Special provisions relating to liquidation of societies**

(1) In applying the provisions of the Companies Act, 1973 (Act 61 of 1973), in terms of section *thirty-five* or *thirty-seven*-

- (a) the members of a society shall be treated as deferred creditors, and their claims against the society in their capacity as members shall not be settled until the debts of ordinary creditors have been paid;
- (b) any reference to the Consolidated Revenue Fund shall, in relation to a society carrying on business in the Territory, be deemed to be a reference to the Territory Revenue Fund.

[Subsec (1) amended by sec 25 of Act 103 of 1979.]

(2) If a society has a share capital, the liability of a shareholder in the event of liquidation under the aforementioned sections shall either be limited to the amount (if any) unpaid on any share held by him, or shall be unlimited according as is provided by the rules of the society.

## **CHAPTER VI**

### **SPECIAL PROVISIONS APPLICABLE TO AFFILIATED FRIENDLY SOCIETIES (ss 39-41)**

#### **39 Definitions**

(1) In this Chapter, unless the context indicates otherwise-  
"**affiliated society**" means a society which is under the control of a central society and is bound to contribute to a fund administered by such central society;  
"**central society**" means a society which controls two or more affiliated societies liable for the payment of contributions to its funds.

(2) The societies contributing to the funds of a central society shall be deemed to be its members, and a central society shall not admit as members any persons other than its affiliated societies.

#### **40 Special provisions applicable to affiliated societies and central societies**

(1) Notwithstanding anything contained in section *five* or *six*-

- (a) an application for registration under this Act of an affiliated society may be made by the central society of which such affiliated society is a member, and in such event the information to be supplied by the central society shall be the same as if such application had been made by the person carrying on the business of the affiliated society; and
- (b) an affiliated society may be registered under this Act by a name identical with or similar to the name under which the central society of which it is a member is registered, but such affiliated society shall add to the name of the central society some distinguishing name, letter or number which will differentiate it from other affiliated societies of the said central society.

(2) The provisions of section *thirteen* shall *mutatis mutandis* apply to a central society except that the following paragraphs shall apply instead of paragraphs (b), (c), (d), (e), (f) and (r), namely-

- (b) the objects of the central society and of its affiliated societies, the composition and powers of the central society and of its affiliated societies respectively and the manner of settling disputes between the central society and any of its affiliated societies;
- (b) the manner in which the funds of the central society are to be raised and the purposes for which they are to be applied;
- (d) the conditions (if any) under which, subject to the provisions of this Act, an affiliated society may secede or be expelled from the central society.

(3) No rule or part of a rule of an affiliated society shall be valid if it conflicts with the rules, or any part of the rules of the central society of which the affiliated society is a member, and any person who is under this Act entitled to receive a copy of the rules of an affiliated society shall also be entitled to receive a copy of the rules of the central society of which the affiliated society is a member.

(4) The registrar may, instead of investigating or appointing an inspector to investigate the affairs or any part of the affairs of an affiliated society in terms of section *thirty-two*, give the central society of which the affiliated society is a member the option of itself making a similar investigation, and the central society shall, if it exercises such option, report to the registrar the results of its investigation, and thereupon the registrar may make an investigation or cause an investigation to be made in terms of that section, if he considers it necessary.

#### **41 Secessions and expulsions of affiliated societies**

(1) A proposed secession or expulsion of an affiliated society from a central society shall be of no force or effect unless-

- (a) the scheme for the proposed secession or expulsion, including full details of the financial arrangements which it is proposed to make between the central society and the affiliated society, has been submitted to the registrar;
- (b) the registrar has been furnished with such additional particulars or with such certificate or special report by a valuator, as he may deem necessary for the purposes of this subsection;
- (c) the registrar is satisfied that such secession or expulsion would not render the said central society or the said affiliated society unable to meet the requirements of this Act or to remain in a sound financial condition or, in the case of a central society or an affiliated society which is not in such a condition, to attain such a condition within a reasonable period of time;
- (d) the registrar has been furnished with such evidence as he may require that the

provisions of the said scheme and the provisions, in so far as they are applicable, of the rules of the central society and of the affiliated society have been carried out; and

- (e) the registrar has forwarded a certificate to the principal officer of the central society and the principal officer of the affiliated society concerned, to the effect that all the requirements of this subsection have been satisfied.

(2) When an affiliated society has seceded or been expelled from a central society, the registrar may allow such affiliated society a reasonable period, not exceeding three months from the date of such secession or expulsion, in which to effect such change of name or such amendments to its rules as may be necessitated by such secession or expulsion, and during such period the affiliated society shall not be deemed, solely by reason of its failure so to change its name or to amend its rules, to have contravened any provision of this Act.

(3) The provisions of subsection (2) shall *mutatis mutandis* apply to the central society in so far as it is affected by the secession or expulsion of the affiliated society.

(4) The provisions of subsection (3) of section *six* shall *mutatis mutandis* apply in connection with any change of name necessitated by the secession or expulsion of an affiliated society.

## CHAPTER VII

### GENERAL AND MISCELLANEOUS (ss 42-53)

#### **42 Carrying on business of unregistered friendly society and use of designation "friendly society"**

(1) No person shall-

- (a) carry on the business of a friendly society which is in existence at the commencement of this Act, for a period of more than six months after such commencement unless application has been duly made under section *five* for the registration of that society; or
- (b) carry on the business of a friendly society established after such commencement unless that society has been duly registered under section *five*; or
- (c) carry on the business of a friendly society for a period of more than twelve months after the date on which the person who applied for registration of the society is advised by the registrar that the application for registration has been refused; or
- (d) after the expiration of a period of twelve months from the commencement of this Act, apply to his business a name which includes the words "friendly society" or any other name which is calculated to indicate that he carries on the business of a friendly society, unless such business is registered as a friendly society under this Act, except with the consent of the registrar.

(2) If at the commencement of this Act any person applies to his business any such name as is referred to in paragraph (d) of subsection (1), and he changes such name and produces any deed or document bearing such name and registered in any deeds registry, to the officer in charge of that registry, and satisfies the said officer that such name was changed by virtue of the provisions of the said paragraph (d), the said officer shall, without any charge, substitute the new name for the previous name on such deed or document and in all the relevant registers in the said registry.

[Subsec (2) added by sec 16 of Act 80 of 1959.]

#### **43 Registrar may require unregistered societies to furnish information**

(1) The registrar may by notice in writing require any person whom he has reason to suspect is carrying on the business of a friendly society which is not registered under this Act, to transmit to him within a period stated in such notice, a copy of the rules, if any, under which such person is operating, together with a copy of the last annual accounts recorded by such

person, and such further information as the registrar may require.

(2) If such person fails to comply with the requirements of the registrar to his satisfaction, the registrar may, with the consent of the Minister, investigate the affairs or any part of the affairs of the said person, or appoint an inspector to hold such an investigation and to report the result of his investigation to the registrar, and the provisions of section *thirty-two* shall *mutatis mutandis* apply to every such investigation, and the registrar shall be entitled to recover from the person concerned all expenses necessarily incurred in connection with the investigation, unless such investigation shows that such person is not carrying on the business of a friendly society.

[Subsec (2) amended by sec 11(2) of Act 68 of 1962.]

(3) If it appears from enquiries made by the registrar in terms of subsection (1) or of any investigation made in terms of subsection (2), that the person concerned is carrying on the business of a friendly society, the registrar shall inform the said person accordingly and thereafter the person concerned shall be regarded as carrying on the business of a friendly society and the provisions of this Act shall apply to the said society.

[Subsec (3) amended by sec 3 of Act 60 of 1963.]

#### **43A Registrar may impose limit on expenses of management and prescribe basis for calculation thereof**

The registrar may from time to time impose a limit on the expenses of management which a registered society may incur during any financial year, and may from time to time prescribe the basis on which expenses of management shall during any financial year be calculated for that purpose.

[Sec 43A inserted by sec 30 of Act 101 of 1976.]

#### **44 Registrar may extend certain periods**

(1) When any person is obliged in terms of any provision of this Act to perform any act within a specified period, the registrar may, at the request of such person, in any particular case, extend that period from time to time.

(2) The registrar may in special circumstances extend any such specified period after it has expired.

#### **45 Annual report by registrar**

The registrar shall annually submit to the Minister a report on his activities under this Act and such report shall be laid by the Minister on the Tables of both Houses of Parliament within fourteen days after receipt thereof if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

#### **46 Right to obtain copies of or to inspect certain documents**

(1) Every registered society shall deliver to any member on demand by such member, and on payment of such sum as may be determined by the rules of the society, a copy of any of the following documents, that is to say-

- (a) the rules of the society;
- (b) the last revenue account prepared in terms of paragraph (a) of subsection (1) of section *twenty-two*, together with the last balance sheet prepared in terms of paragraph (b) of that subsection.

(2) Any member shall be entitled to inspect without charge at the registered office of a registered society, a copy of any of the following documents and make extracts therefrom, that is to say-

- (a) the documents referred to in subsection (1);
- (b) the last valuation (if any) by a valuator prepared in terms of section *twenty-three*;

- (c) the last statement of liabilities prepared in terms of section *twenty-four*;
- (d) the last statement of assets prepared in terms of section *twenty-five*.

#### **47 Regulations**

The Minister may make regulations, not inconsistent with the provisions of this Act-

- (a) in regard to all matters which by this Act are required or permitted to be prescribed by regulation;
- (b) prescribing the form of any document referred to in this Act for which provision is not otherwise made in this Act, or prescribing alterations or additions to any such form;
- (bA) prescribing matters in addition to those contemplated in any other provision of this Act, in respect of which fees shall be payable and the fee payable in respect of each such matter;

[Para (bA) inserted by sec 21 of Act 86 of 1984.]

- (bB) limiting, notwithstanding the provisions of section 20(1), the amount which and the extent to which a society may invest in particular assets or in particular kinds or categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;
- (bC) authorizing the registrar to grant unconditional or conditional exemption, whether unlimited or limited in duration, from provisions of the regulations contemplated in paragraph (bB);

[Para (bB) and (bC) inserted by sec 11 of Act 53 of 1989.]

- (c) generally, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

[Sec 47 amended by sec 26(1) of Act 103 of 1979.]

#### **48 Penalties**

(1) Any person who-

- (a) contravenes or fails to comply with the provisions of subsection (1) of *section forty six*;  
*or*
- (b) fails to make a return or transmit or deposit a scheme, report, account, statement or other document when required to do so in terms of this Act; or
- (c) invests assets otherwise than in accordance with the provisions of this Act or contravenes any condition on which he has been exempted from the provisions of section *twenty*; or
- (d) contravenes the provisions of section *nineteen*; or
- (e) fails or refuses to furnish information, or produce documents or accounts, or render other assistance to the registrar when called upon to do so in terms of this Act; or
- (f) after the expiration of a period of six months from the commencement of this Act, induces or attempts to induce any person to become a member of; or to contribute to a society not registered under this Act; or
- (g) contravenes the provisions of section 12 or 42, or fails to comply with a directive in terms of section 43A or exceeds a limit imposed in terms of that section,

[Para (g) substituted by sec 31(a) of Act 101 of 1976.]

shall be guilty of an offence, and liable on conviction-

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding ten pounds;
- (ii) in the case of an offence referred to in paragraph (b) or (c), to a fine not exceeding twenty-five pounds;
- (iii) in the case of an offence referred to in paragraph (d), (e) or (f), a fine of not exceeding fifty pounds; and

(iv) in the case of an offence referred to in paragraph (g) to a fine not exceeding one hundred pounds, or, if the offender is an individual, to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

(2) Without derogation from the provisions of subsection (1), a person who has failed to make a return or to transmit or deposit a scheme, report, account, statement or other document within the time prescribed by or under this Act, may thereafter furnish such return or transmit or deposit such scheme, report, account, statement or other document subject to the payment of a penalty prescribed by regulation.

[Subsec (2) substituted by sec 31(b) of Act 101 of 1976.]

(3) Any penalty prescribed under subsection (2) may vary according to the period which has elapsed since the last day on which the return, scheme, report, account, statement or other document in question was required to be made, transmitted or deposited.

(4) For the purpose of subsection (2) the decision of the registrar as to the time within which a return, scheme, report, account, statement or other document referred to in that subsection was required to be furnished, transmitted or deposited, shall be final.

(5) Any penalty payable under subsection (2) shall be a debt due to the Union Government and may be recovered by the registrar by action in any competent court.

#### **48A Protection of moneys due on retirement of member**

(1) Moneys due by way of benefit in terms of the rules of a friendly society on the retirement of a member who was a member of the society for a period of at least three years, or any other asset into which the member converted such money or part thereof, shall not, during a period of five years as from the date upon which the money became due, be liable to be attached in execution of a judgment or order of the court, at the instance of his creditors, and shall not form part of his insolvent estate.

(2) Where the benefit referred to in subsection (1), was pledged, the provisions of that subsection shall apply only to so much of the value of that benefit as exceeds the amount of the liability secured by the pledge.

[Sec 48A inserted by sec 15 of Act 65 of 1968.]

#### **48B Protection of moneys due on death of member**

Moneys due by way of benefit in terms of the rules of a friendly society on the death of a member who was a member of the society for a period of at least three years, and any money or other asset protected under section 48A shall, to the extent of such protection, not be available on the death of the member for the payment of his creditors as against the claim of-

- (a) his surviving spouse, or his parent, child or stepchild, under his will; or
- (b) his surviving spouse or his parent or child, by right of succession *ab intestato*.

[Sec 48B inserted by sec 15 of Act 65 of 1968.]

#### **49 Exemption from Act 34 of 1934**

The Trust Moneys Protection Act, 1934 (Act 34 of 1934), shall not apply to a society registered under this Act.

#### **50**

Amends sections 1 and 50 of the Insurance Act 27 of 1943.

#### **51 Repeal of laws**

So much of the Friendly Societies Act, 1892 (Act 5 of 1892), as has not previously been repealed, and the Friendly Societies Amendment Act, 1895 (Act 26 of 1895), of the Cape of Good Hope, and Law 20 of 1862 and Law 7 of 1897 of Natal, are hereby repealed.

#### **52 Application to South-West Africa**

This Act shall apply also in the Territory.

**53 Short title and commencement**

This Act shall be called the Friendly Societies Act, 1956, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

**NATIONAL WELFARE ACT 79 OF 1965**