



# Building Societies Act 1986

## 1986 CHAPTER 53

### PART X

#### DISSOLUTION, WINDING UP, MERGERS AND TRANSFER OF BUSINESS

##### *Dissolution and winding up*

#### **86 Modes of dissolution and winding up**

- (1) A building society—
  - (a) may be dissolved by consent of the members, or
  - (b) may be wound up voluntarily or by the court,in accordance with this Part; and a building society may not, except where it is dissolved by virtue of section 93(5), 94(10) or 97(9), be dissolved or wound up in any other manner.
- (2) A building society which is in the course of dissolution by consent, or is being wound up voluntarily, may be wound up by the court.

#### **87 Dissolution by consent**

- (1) A building society may be dissolved by an instrument of dissolution, with the consent (testified by their signature of that instrument) of three-quarters of the members of the society, holding not less than two-thirds of the number of shares in the society.
- (2) An instrument of dissolution under this section shall set out—
  - (a) the liabilities and assets of the society in detail;
  - (b) the number of members, and the amount standing to their credit in the accounting records of the society;
  - (c) the claims of depositors and other creditors, and the provision to be made for their payment;
  - (d) the intended appropriation or division of the funds and property of the society ;

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- (e) the names of one or more persons to be appointed as trustees for the purposes of the dissolution, and their remuneration.
- (3) An instrument of dissolution made with consent given and testified as mentioned in subsection (1) above may be altered with the like consent, testified in the like manner.
  - (4) The provisions of this Act shall continue to apply in relation to a building society as if the trustees appointed under the instrument of dissolution were the board of directors of the society.
  - (5) The trustees, within 15 days of the necessary consent being given and testified (in accordance with subsection (1) above) to—
    - (a) an instrument of dissolution, or
    - (b) any alteration to such an instrument,
 shall give notice to the central office of the fact and, except in the case of an alteration to an instrument, of the date of commencement of the dissolution, enclosing a copy of the instrument or altered instrument, as the case may be; and if the trustees fail to comply with this subsection they shall each be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
  - (6) An instrument of dissolution under this section, or an alteration to such an instrument, shall be binding on all members of the society as from the date on which the copy of the instrument or altered instrument, as the case may be, is placed in the public file of the society under subsection (10) below.
  - (7) The trustees shall, within 28 days from the termination of the dissolution, give notice to the central office of the fact and the date of the termination, enclosing an account and balance sheet signed and certified by them as correct, and showing the assets and liabilities of the society at the commencement of the dissolution, and the way in which those assets and liabilities have been applied and discharged; and, if they fail to do so they shall each be liable on summary conviction—
    - (a) to a fine not exceeding level 2 on the standard scale, and
    - (b) in the case of a continuing offence, to an additional fine not exceeding £10 for every day during which the offence continues.
  - (8) Except with the consent of the Commission, no instrument of dissolution, or alteration of such an instrument, shall be of any effect if the purpose of the proposed dissolution or alteration is to effect or facilitate the transfer of the society's engagements to any other society or to a company.
  - (9) Any provision in a resolution or document that members of a building society proposed to be dissolved shall accept investments in a company or another society (whether in shares, deposits or any other form) in or towards satisfaction of their rights in the dissolution shall be conclusive evidence of such a purpose as is mentioned in subsection (8) above.
  - (10) The central office shall keep in the public file of the society any notice or other document received by it under subsection (5) or (7) above and shall record in that file the date on which the notice or document is placed in it.

## 88 Voluntary winding up

- (1) A building society may be wound up voluntarily under the applicable winding up legislation if it resolves by special resolution that it be wound up voluntarily.

- (2) A copy of any special resolution passed for the voluntary winding up of a building society shall be sent by the society to the central office within 15 days after it is passed; and the central office shall keep the copy in the public file of the society.
- (3) A copy of any such resolution shall be annexed to every copy of the memorandum or of the rules issued after the passing of the resolution.
- (4) If a building society fails to comply with subsection (2) or (3) above the society shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale and so shall any officer who is also guilty of the offence.
- (5) For the purposes of this section, a liquidator of the society shall be treated as an officer of it.

## **89 Winding up by court: grounds and petitioners**

- (1) A building society may be wound up under the applicable winding up legislation by the court on any of the following grounds in addition to the grounds referred to or specified in section 37(1), that is to say, if—
  - (a) the society has by special resolution resolved that it be wound up by the court;
  - (b) the number of members is reduced below ten;
  - (c) the number of directors is reduced below two;
  - (d) being a society registered as a building society under this Act or the repealed enactments, the society has not been granted authorisation under section 9 or been authorised under any corresponding enactment and more than three years has expired since it was so registered;
  - (e) the society has had its authorisation revoked under section 43 and has not been reauthorised thereafter;
  - (f) the society exists for an illegal purpose;
  - (g) the society is unable to pay its debts ; or
  - (h) the court is of the opinion that it is just and equitable that the society should be wound up.
- (2) Except as provided by subsection (3) below, section 37 or the applicable winding up legislation, a petition for the winding up of a building society may be presented by—
  - (a) the Commission,
  - (b) the building society or its directors,
  - (c) any creditor or creditors (including any contingent or any prospective creditor), or
  - (d) any contributory or contributories,or by all or any of those parties, together or separately.
- (3) A contributory may not present a petition unless either—
  - (a) the number of members is reduced below ten, or
  - (b) the share in respect of which he is a contributory has been held by him, or has devolved to him on the death of a former holder and between them been held, for at least six months before the commencement of the winding up.
- (4) For the purposes of this section, in relation to a building society,—
  - (a) the reference to authorisation under an enactment corresponding to section 9 is a reference to authorisation granted or deemed to have been granted under—

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- (i) in Great Britain, regulation 5 of the Building Societies (Authorisation) Regulations 1981, and
  - (ii) in Northern Ireland, regulation 5 of the Building Societies (Authorisation) Regulations (Northern Ireland) 1982, and
  - (b) the reference to its existing for an illegal purpose includes a reference to its existing after its purpose or principal purpose has ceased to be that required by section 5(1) for the establishment of a building society under this Act.
- (5) In this section, " contributory " has the same meaning as in paragraph 9(2) or, as the case may be, paragraph 37(2) of Schedule 15 to this Act.

## **90 Application of winding up legislation to building societies**

- (1) In this section " the companies winding up legislation " means the enactments applicable in relation to England and Wales, Scotland or Northern Ireland which are specified in paragraph 1 of Schedule 15 to this Act (including any enactment which creates an offence by any person arising out of acts or omissions occurring before the commencement of the winding up).
- (2) In its application to the winding up of a building society, by virtue of section 88(1) or 89(1), the companies winding up legislation shall have effect with the modifications effected by Parts I to III of Schedule 15 to this Act; and the supplementary provisions of Part IV of that Schedule shall also have effect in relation to such a winding up.
- (3) In sections 37, 88, 89 and 103, " the applicable winding up legislation " means the companies winding up legislation as so modified.

## **91 Power of court to declare dissolution of building society void**

- (1) Where a building society has been dissolved under section 87 or following a winding up, the High Court or, in relation to a society whose principal office was in Scotland, the Court of Session, may, at any time within 12 years after the date on which the society was dissolved, make an order under this section declaring the dissolution to have been void.
- (2) An order under this section may be made, on such terms as the court thinks fit, on an application by the trustees under section 87 or the liquidator, as the case may be, or by any other person appearing to the Court to be interested.
- (3) When an order under this section is made, such proceedings may be taken as might have been taken if the society had not been dissolved.
- (4) The person on whose application the order is made shall, within seven days of its being so made, or such further time as the Court may allow, furnish the central office with a copy of the order; and the central office shall keep the copy in the public file of the society.
- (5) If a person fails to comply with subsection (4) above, he shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) in the case of a continuing offence, to an additional fine not exceeding £40 for every day during which the offence continues.

## **92**     **Supplementary**

Where a building society is being wound up or dissolved by consent, a member to whom an advance has been made under a mortgage or other security, or under the rules of the society, shall not be liable to pay any amount except at the time or times and subject to the conditions set out in the mortgage or other security, or in the rules, as the case may be.