

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,019 of 5th January, 1998

**THE BANKING (EXTENSION TO BUILDING SOCIETIES)
ORDINANCE 1997**

Section

1. Title, commencement and interpretation.
2. Building societies brought under the Banking Ordinance 1992.
3. Provisions for existing registered societies proposing to be wound up.
4. Conversion of existing registered societies into companies.
5. Recognised building societies to be European institutions.
6. Minimum capital.
7. Restrictions on use of title "building society".

SCHEDULE

Transitional provisions applicable to certain existing registered societies.

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]



I ASSENT,
M J ROBINSON,
ACTING GOVERNOR.
5th January, 1998.



GIBRALTAR

No. 4 of 1998

AN ORDINANCE to repeal the Building Societies Ordinance; to bring building societies within the scope of the Banking Ordinance 1992; and to make transitional provisions for registered building societies proposing to be wound up.

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

ENACTED by the Legislature of Gibraltar.

Title, commencement and interpretation.

1.(1) This Ordinance may be cited as the Banking (Extension to Building Societies) Ordinance 1997.

(2) This Ordinance shall come into force on a day to be appointed by the Governor by notice in the Gazette and different days may be so appointed for different purposes.

(3) In this Ordinance the commencement date means the day fixed for the coming into operation of section 3;

“the Commissioner” has the same meaning as in the Banking Ordinance 1992;

“existing registered society” means a building society which, immediately before the passing of this Ordinance, is registered under the Building Societies Ordinance;

“the winding-up period” shall be construed in accordance with section 3(3).

Building societies brought under the Banking Ordinance 1992.

2.(1) The following enactments are hereby repealed -

- (a) the Building Societies Ordinance; and
- (b) in the Banking Ordinance 1992, in section 10 (exemptions for certain persons and bodies) paragraph (b) of subsection (1) (building societies registered or recognised under the Building Societies Ordinance).

(2) Subsection (1) has effect subject to section 3.

Provisions for existing registered societies proposing to be wound up.

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

3.(1) If the directors of an existing registered society so resolve, not later than one month after the commencement date the society shall give notice to the Commissioner that the directors intend to propose the winding up of the society under section 23(1)(d) of the Building Societies Ordinance.

(2) A notice under subsection (1) shall be of no effect for the purposes of this Ordinance unless accompanied by a fee of such amount as may be determined by the Commissioner but, after the giving of such a notice and the payment of the fee, the society shall cease to be liable for any fees under the Building Societies Ordinance.

(3) Where a notice is given to the Commissioner under subsection (1) with respect to an existing registered society, the transitional provisions in the Schedule shall have effect in relation to that society for the period (in this Ordinance referred to as the winding-up period) which begins on the commencement date and ends on the first anniversary of that date or on such later date as, in the case of that society, the Commissioner -

- (a) may consider appropriate to allow for the orderly winding up of the society; and
- (b) may notify in the Gazette;

and any such extension of the winding-up period by the Commissioner shall be on such terms, as to fees and other matters, as he may determine.

(4) If, at the end of the winding-up period applicable to an existing registered society, the society has not been wound up, nothing in this section shall affect the application of the provisions of the Banking Ordinance 1992 in relation to it as from the end of that period.

Conversion of existing registered societies into companies.

4.(1) This section applies in relation to an existing registered society if -

- (a) the society does not give notice under subsection (1) of section 3 before the expiry of the period of one month specified in that subsection; or

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

- (b) the society does give such a notice but, at the end of the winding-up period applicable to it, the society has not been wound up;

and, in relation to such a society, any reference in this section to the relevant time is a reference to the end of the period of one month referred to in paragraph (a) or, where paragraph (b) above applies, the end of the winding-up period.

(2) At the relevant time the society shall, by virtue of, and in accordance with, this section, become a company limited by shares, within the meaning of the Companies Ordinance, having -

- (a) as its name, its former name with the addition of the word “limited” and, as its share capital, the shares which were in issue before the relevant time under the Building Societies Ordinance;
- (b) as its directors, the persons who were the directors of the society immediately before the relevant time; and
- (c) the same assets and liabilities as immediately before the relevant time.

(3) Not later than one month after the relevant time, the directors of the society shall prepare and subscribe to a memorandum of association which complies with such conditions as may be required by the Commissioner and is in accordance with the form set out in Table B in Schedule 1 to the Companies Ordinance or as near thereto as circumstances admit.

(4) A memorandum prepared under subsection (3) shall be delivered to the Registrar of Companies who shall retain and register it and thereupon, except as to the date of incorporation, the provisions of the Companies Ordinance shall apply to the society (as a company) as if the memorandum had been delivered under section 14 of that Ordinance.

(5) No duty shall be charged under Part III of the Stamp Duties Ordinance on the capital of a company which comes into being by virtue of this section.

(6) In section 79 of the Banking Ordinance 1992 (power of the Governor to make regulations) at the end of paragraph (p) there shall be added the words

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

“or to give full effect to the provisions of section 4 of the Banking (Extension to Building Societies) Ordinance 1997”.

Recognised building societies to be European institutions.

5.(1) Any institution which, immediately before the commencement date, was recognised under section 41A of the Building Societies Ordinance (bodies authorised as, or providing services similar to, building societies in member States of the European Economic Area) shall, on and after that date,

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

be treated for the purposes of the Banking Ordinance 1992 as a European institution and, accordingly, as a European authorised institution or a European subsidiary institution, as the case may require.

(2) Without prejudice to the generality of paragraph (1), for the purposes of the definitions of European authorised institution and European subsidiary institution in the Banking Ordinance 1992, a statement produced to the Registrar pursuant to section 41A(1)(a)(i) of the Building Societies Ordinance shall be regarded, in relation to the body to which it relates, as the notice to the Commissioner from the relevant supervisory authorities.

Minimum capital.

6.(1) In section 35 of the Banking Ordinance 1992 (minimum capital), after subsection (1) there shall be inserted the following subsections -

“(1A) In the case of an institution which was an existing registered society to which section 4 of the 1997 Ordinance applied, the provisions of section 23(1)(c) shall not apply but such an institution, whose capital and reserves do not attain the level prescribed in that section, shall have paid-up capital and reserves of an amount no less than it had at the relevant time, unless -

- (a) it has at any time after 18th December 1996 had paid-up capital and reserves of a greater amount, in which case it shall have paid up capital and reserves of an amount no less than that amount; or
- (b) there is any change in the person who is the parent controller of the institution, in which case the level prescribed in section 23(1)(c) shall apply to the institution from the date of the change.

(1B) In subsection (1A) and this subsection -

- (a) “the 1997 Ordinance” means the Banking (Extension to Building Societies) Ordinance 1997;
- (b) “existing registered society” has the same meaning as in the 1997 Ordinance; and

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

(c) "the relevant time" has the meaning given by section 4(1) of the 1997 Ordinance."

- (2) In subsection (2) of section 35 of the Banking Ordinance 1992 -
- (a) after the words "Subsection (1)(b)" there shall be inserted "or, as the case may be, subsection (1A)(b)"; and
 - (b) for the words "31 December 1992" there shall be substituted "the material date".
- (3) After subsection (2) of section 35 of the Banking Ordinance 1992, there shall be inserted the following subsection -
- "(3) In subsection (2) "the material date" means -
- (a) in a case where subsection (1)(b) would otherwise apply, 31 December 1992; and
 - (b) in a case where subsection (1A)(b) would otherwise apply, the relevant time, as defined in subsection (1B)(c)."

Restrictions on use of title "building society".

7.(1) After section 75 of the Banking Ordinance 1992 there shall be inserted the following section -

"Restriction on use of words "building society".

75A. In relation to or in connection with any business carried on in or from within Gibraltar, no person shall use the words "building society" other than -

- (a) a licensed institution which uses those words with the prior written consent of the Commissioner and in accordance with such conditions, if any, as the Commissioner may impose in giving that consent; or
- (b) a European institution which lawfully uses those words (or words in another language which translate

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

into English as “building society”) as part of its name under the law of the country in which it or its parent institution is for the time being authorised by the relevant supervisory authority, pursuant to Article 3 of the First Banking Co-ordination Directive (as extended, where applicable, by the EEA agreement).”.

(2) In consequence of subsection (1), in section 17 of the Companies Ordinance (restriction on registration of companies by certain names), paragraph (g) of subsection (1) (which prohibits the use of a name containing the words “building society”) and the word “or” which precedes that paragraph are hereby repealed.

SCHEDULE

Section 3(3)

**TRANSITIONAL PROVISIONS APPLICABLE TO CERTAIN
EXISTING REGISTERED SOCIETIES**

1. In this Schedule “society” means an existing registered society in respect of which a notice has been given to the Commissioner under section 3(1).
2. Throughout the winding-up period, the Building Societies Ordinance shall continue to apply to a society subject to the following modifications -
 - (a) for any reference to the Financial and Development Secretary there shall be substituted a reference to the Commissioner and any requirement for the Financial and Development Secretary to consult the Registrar shall be omitted;
 - (b) in section 37A (inspections etc. by Financial and Development Secretary) subsection (1) shall be omitted;
 - (c) in section 39A (cancellation and suspension of registration) after subsection (1) there shall be inserted the following subsection -

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

“(1A) Where the Commissioner of Banking acts under subsection (1), he may give the society concerned such directions in writing as he thinks fit to protect the interests of depositors; and subsections (3) and (4) of section 66 of the Banking Ordinance 1992 shall apply to any direction so given as they apply to a direction given under that section.”.

3.(1) Throughout the winding-up period, the Banking Ordinance 1992 shall have effect in relation to a society -

- (a) as if section 10(1)(b) continued in force;
- (b) as if section 75A were omitted; and
- (c) as if the society were a licensed institution for the purposes of the provisions of that Ordinance set out in sub-paragraph (2).

(2) The provisions of the Banking Ordinance 1992 referred to in sub-paragraph (1)(c) are—

- (a) section 43 (disclosure of inability to meet obligations);
- (b) section 47 (communications by auditors to the Banking Supervisor);
- (c) Part VII (supervision of deposit-taking businesses); and
- (d) section 82 (offences).

Passed by the Gibraltar House of Assembly on the 19th day of December, 1997.

D. J. REYES,

Clerk to the Assembly.

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]

The Banking (Extension to Building Societies) Ordinance 1997
[No.4 of 1998]
