

**CHAPTER 22:07**  
**HOUSING AND BUILDING ACT**

*Acts 9/1979, 39/1979, 5/1980, 44/1981, 42/1983, 25/1984, 8/1988 (s. 164), 5/1995, 22/2001 (s. 4), 23/2004 (s. 282).*

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**AN ACT to provide for the establishment and control of funds related to housing and building; to define the purposes for which the moneys in each of the funds may be used; to authorize the Minister to make loans, give guarantees and other undertakings, acquire, let and dispose of immovable property, construct buildings and provide services, in certain circumstances and for certain purposes; to provide for an alternative procedure; to foreclosure in relation to certain loans in respect of which such guarantees have been given; to provide for regulating the leasing of immovable property; and to provide for matters connected therewith and incidental thereto.**

[Date of commencement: 2nd February, 1979.]

## PART I

### PRELIMINARY

#### 1 Short title

This Act may be cited as the Housing and Building Act [*Chapter 22:07*].

#### 2 Interpretation

In this Act—

“boarding-house” means any premises in respect of which the business of supplying accommodation or food and accommodation for reward is carried on but does not include—

- (a) premises in which accommodation is provided for fewer than five persons who are not members of the family of the person by whom the said business is carried on; or
- (b) a club; or
- (c) a lodging-house, hostel or other similar premises provided for school children or by a charitable institution; or
- (d) premises in respect of which a current licence for the sale of liquor has been granted under the Liquor Act [*Chapter 14:12*];

“build”, in relation to a dwelling or boarding-house, includes to augment, extend, repair or maintain such dwelling or boarding-house;

“declared area” means an area declared to be a declared area in terms of subsection (2) of section *eighteen*;

“dwelling” means a building, or part of a building, including a flat, designed as a dwelling for a single family and includes the usual appurtenances and outbuildings and such services and other improvements as may be approved by the Minister;

“Housing and Guarantee Fund” means the Fund referred to in section *three*;

“local authority” means—

- (a) a municipal council, town council or local board established in terms of the Urban Councils Act [*Chapter 29:15*];
- (b) a rural district council established in terms of the Rural District Councils Act [*Chapter 29:13*];

“Minister” means the Minister of National Housing and Public Construction or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“National Housing Fund” means the Fund referred to in section *fourteen*;

“rates fund” means a rates fund established in terms of Part V.

## PART II

### HOUSING AND GUARANTEE FUNDS

#### 3 Establishment of Housing and Guarantee Funds

(1) Notwithstanding anything to the contrary contained in the Audit and Exchequer Act [*Chapter 22:03*], there is hereby established a fund, to be known as the Housing and Guarantee Fund, which shall be vested in the Minister and of which the Minister shall, subject to this Act, have the sole management.

(2) The Fund established by subsection (1) shall consist of—

- (a) moneys received by way of commission under any stipulation made in terms of subsection (5) of section *four*;

- (b) moneys received in respect of interest, rents or the realization of any property of, or in respect of any other transaction relating to, the Fund;
- (c) moneys appropriated for the purpose by Act of Parliament;
- (d) property acquired by the Minister under section *five* or Part III;
- (e) moneys transferred to the Fund under section *sixteen*;
- (f) any other assets to which the Fund may become entitled.

#### **4 Minister may guarantee certain loans**

(1) Subject to subsection (2), the Minister may undertake, on such terms and conditions as he may think fit, to guarantee the repayment of a loan made in the following cases and subject to the limitations respectively set out as follows, that is to say, a loan—

- (a) to any person for the purpose of purchasing land and building a dwelling thereon or of building a dwelling on land owned by the borrower or of purchasing an existing dwelling;
- (b) to any person for the purpose of purchasing land and building two or more dwellings thereon or of building two or more dwellings on land owned by the borrower or of purchasing two or more dwellings, if in all such cases all the dwellings are to be let by the borrower or one of the dwellings is to be occupied by the borrower personally and the remaining dwelling or dwellings are to be let by the borrower;
- (c) to any person for the purpose of—
  - (i) acquiring the lease of a dwelling or building intended to be used for business or industrial purposes if such lease is for a period of not less than thirty-five years; or
  - (ii) building one or more dwellings or a building intended to be used for business or industrial purposes on land which is leased by the borrower for not less than thirty-five years; or
  - (iii) purchasing an existing building intended to be used for business or industrial purposes or building a building intended to be used for such purposes on land owned by him or held by him under an agreement of purchase;

where the land concerned is in such areas as may from time to time be prescribed:

Provided that where a person acquires, subsequent to the date of commencement thereof, a lease referred to in this paragraph, which was originally for a period of not less than thirty-five years, the Minister may undertake to guarantee a loan to such person in terms of this paragraph, notwithstanding the fact that the lease will terminate in less than thirty-five years;

- (d) to any person for the purpose of purchasing land and building a boarding-house thereon or of building a boarding-house on land owned by the borrower.

(2) No guarantee shall be undertaken in terms of subsection (1) in respect of an amount which exceeds such sum or value as the Minister, with the approval of the Minister responsible for finance, may from time to time fix for all or different cases.

(3) An amount guaranteed under this section may include any sums payable by the borrower to the lender in terms of the loan agreement.

(4) The Minister may stipulate for the payment by the lender of a commission as one of the conditions of any guarantee undertaken under this section.

(5) When and as soon as an amount guaranteed under this section has been repaid the guarantee shall be extinguished.

#### **5 Minister may advance moneys and purchase and let dwellings**

(1) The Minister may—

- (a) on such terms and conditions as he may think fit, advance moneys to any person who is carrying out an approved scheme, in respect of work done in connection therewith;
- (b) on such terms and conditions as he may think fit, make advances to any person for the purpose of purchasing land and building thereon a building intended to be used for the accommodation of persons who are aged, handicapped or maladjusted in the community or who are of such other class as may be approved by the Minister, or of building on land owned by the borrower a building intended to be used for the accommodation of any such class of persons, or of purchasing an existing building intended to be used for the accommodation of any such class of persons;
- (c) on such terms and conditions as he may think fit, advance moneys—
  - (i) to any person carrying on the business of making loans secured by first mortgages of immovable property, for the purpose of enabling any borrower; or
  - (ii) secured by a mortgage of the property concerned. to any person for the purpose of enabling such person;

to do one or more of the following—

- A. to purchase land with an existing dwelling thereon;
- B. to build a dwelling on land owned by the borrower;

C. to purchase land and build a dwelling thereon:

Provided that this paragraph shall apply only in respect of property forming part of the assets of the Housing and Guarantee Fund or forming part of an approved scheme;

- (d) undertake to purchase and purchase dwellings forming part of an approved scheme where the person carrying out such scheme has not, within such reasonable period after the completion of the dwellings as the Minister may determine, sold such dwellings;
- (e) where a claim arises or is likely to arise from a guarantee under section *four*, purchase the land or building in respect of which the loan forming the subject of the guarantee was given;
- (f) let, sell or otherwise dispose of any property forming part of the assets of the Housing and Guarantee Fund;
- (g) acquire any property for the purposes of the Housing and Guarantee Fund;
- (h) with the approval of the Minister responsible for finance and of such terms and conditions as they may think fit, borrow moneys on security of mortgages of property forming part of the assets of the Housing and Guarantee Fund;
- (i) with the approval of the Minister responsible for finance, do one or more of the following—
  - (i) purchase or lease dwellings, hostels or other buildings intended to be used for residential purposes;
  - (ii) acquire land for the construction thereon of dwellings, hostels or other buildings intended to be used for residential purposes;
  - (iii) construct dwellings, hostels and other buildings intended to be used for residential purposes;
  - (iv) provide essential services for any dwelling, hostel or building purchased, leased or constructed by him in terms of subparagraph (i), (ii) or (iii);
  - (v) enter into contracts with other persons for the purposes referred to in subparagraph (iii) or (iv);
  - (vi) sell, let or otherwise dispose of any lease, dwelling, hostel, building or land purchased, acquired or constructed by him or on his behalf in terms of this paragraph.

(2) Where any land, dwelling or other building has been purchased or any lease has been acquired in terms of paragraph (g) of subsection (1) of section *fifteen* for the National Housing Fund, the Minister may, after consultation with the Minister responsible for finance, make such contribution towards the expenditure incurred by that Fund in connection with such purchase or acquisition as may be agreed upon by them.

(3) For the purposes of subsection (1)—

“approved scheme” means a scheme approved by the Minister for the construction of one or more dwellings approved by him on any piece of land where such piece of land is registered in the Deeds Registry and—

- (a) is included in a township as defined in the Land Survey Act [*Chapter 20:12*]; or
- (b) does not exceed twenty hectares in extent and is situated in the vicinity of a township as defined in the Land Survey Act [*Chapter 20:12*] and is used or intended primarily for residential purposes; or
- (c) is specified by the Minister for the purposes of the sector;

“essential services” means a service for the supply, disposal and removal of water, electricity, rubbish and sewage and such other services as the Minister, with the approval of the Minister responsible for finance, may determine.

## **6 Application of Housing and Guarantee Funds**

(1) The moneys of the Housing and Guarantee Fund may be applied towards—

- (a) meeting any claim arising from a guarantee given by the Minister under section *four*;
- (b) any of the purposes set out in section *five*;
- (c) any decrease in the value of any asset of the Fund;
- (d) any matter incidental to any of the foregoing.

(2) The following expenditure, losses and liabilities shall be charged to and discharged from the Housing and Guarantee Fund—

- (a) any losses incurred on the realization of any asset of the Fund;
- (b) any moneys transferred from the Fund under section *seven*;
- (c) any expenditure, loss or liability lawfully appertaining to the Fund.

## **7 Transfer of money to another Fund**

The Minister may, whenever he considers it expedient to do so, after consultation with the Minister responsible for finance, transfer such sum as may be agreed upon by them from the Housing and Guarantee Fund to the National Housing Fund.

## **PART III**

### **ALTERNATIVE PROCEDURE TO FORECLOSURE ON MORTGAGE DEFAULTS**

## **8 Interpretation**

In this Part—

“certificate” means the certificate referred to in subsection (2) of section *nine*;

“guarantee” means the guarantee referred to in subsection (1) of section nine in so far as it relates to a particular loan;

“lender” means the lender referred to in subsection (1) of section nine;

“loan” means the loan referred to in subsection (1) of section nine and includes the full amount guaranteed;

“mortgagor” means the mortgagor referred to in subsection (1) of section nine, as described in the mortgage bond;

“property” means the property referred to in subsection (1) of section nine;

“subsequent mortgage” means any second or ensuing mortgage in respect of the property in favour of a mortgagee other than the lender, and “subsequent mortgagee” and “subsequent mortgage bond” shall be construed accordingly;

“the mortgage” means the mortgage referred to in subsection (1) of section nine and includes a second or ensuing mortgage executed by the mortgagor in respect of the property in favour of the lender, and “the mortgage bond” shall be construed accordingly.

## 9 Application of this Part

(1) Where a person has mortgaged property as security for a loan and there is in relation to such loan a guarantee made in terms of section *four* and where the mortgagor has made such default in his obligations in terms of the mortgage, at any time before, on or after the 13th October, 1967, as would entitle the lender to foreclose, the lender shall give the Minister written notice of the default within such period and containing such particulars of the state of the loan as may be prescribed, together with a recommendation as to whether in the opinion of the lender a certificate should be issued.

(2) Subject to this section, upon receipt of such notice the Minister may, if—

- (a) he—
  - (i) has received the written consent thereto of the mortgagor; or
  - (ii) has obtained a judgment against the mortgagor for the amount owing in terms of the mortgage or has obtained from the lender cession of the rights under such a judgment; or
  - (iii) is satisfied, after due inquiry, that the mortgagor has abandoned the property;
 and
- (b) he is satisfied that the lender has made all reasonable efforts to enforce his rights in terms of the mortgage, including, if he so requires, realization of any collateral security related thereto, foreclosure or other court action; and
- (c) he has agreed with the lender upon the amount of the loan and any costs and charges in relation thereto to be payable by him in terms of section *ten* and the terms and conditions of such payments; and
- (d) the rights of the lender in terms of the mortgage have been ceded to him; and
- (e) the lender has consented thereto in writing; and
- (f) any subsequent mortgagees have been given written notification of the amount agreed upon in terms of paragraph (c);

issue a certificate to the Registrar of Deeds in the prescribed form stating that the provisions of this Part shall apply in respect of the property, and thereupon such provisions shall so apply notwithstanding anything to the contrary contained in the guarantee, the mortgage, any subsequent mortgage or any other agreement.

(3) The Minister shall not issue a certificate unless—

- (a) written notice of the prescribed period and in the prescribed manner has been given to the mortgagor, the occupier of the property and any subsequent mortgagees, stating that the powers conferred by this Part may be exercised in respect of the property and containing the valuation of the property made in terms of paragraph (b); and
- (b) not later than a date two months before the proposed issue of the certificate the value of the property as at that date has been assessed by a State valuer as being less than the sum of—
  - (i) the amount outstanding on the loan as at that date; and
  - (ii) the costs of foreclosure as estimated by the Minister;
 and
- (c) if the mortgagor has died or his estate has been sequestrated or assigned, the executor, trustee or assignee, as the case may be, consents thereto in writing.

(4) The mortgagor or any other person having an interest in the value of the property may within one month of the valuation made in terms of paragraph (b) of subsection (3) apply to the Administrative Court to have such valuation set aside on the ground that it is unreasonable or on any other good ground, and that court may thereupon make such order as it considers fit.

## 10 Effect of certificate

Upon the issue of a certificate the Minister shall become liable to pay the lender the amount agreed upon under paragraph (c) of subsection (2) of section *nine* and the guarantee shall be extinguished.

## **11 Acquisition of property by Minister**

(1) Upon receipt of a certificate and the deed or other evidence of cession of the rights referred to in subparagraph (ii) of paragraph (a), or in paragraph (d), as the case may be, of subsection (2) of section *nine* and the title deed, the mortgage bond and any subsequent mortgage bonds, the Registrar of Deeds shall, notwithstanding anything to the contrary in any law, and without any requirements as to the consent of the mortgagor or any subsequent mortgagee, cancel such bonds and endorse the particulars of the certificate together with the day and hour when it was received, on such deed and in his registers. Should the title deed be lost or otherwise unobtainable, then, upon application by the Minister, after advertisement has been made in the manner provided under the Deeds Registries Act [*Chapter 20:05*], the Registrar of Deeds shall, if he is satisfied that no good reason to the contrary exists, issue to the Minister a certified copy to take the place of such deed.

(2) Notwithstanding anything to the contrary in any law, upon such endorsement being made—

- (a) ownership of the property shall pass to the Minister;
- (b) the Minister may, by any person authorized by him in writing and without recourse to any court, enter upon and take possession of the property and, subject to any lease then in force, eject any occupiers thereon;
- (c) the debt of the mortgagor in terms of the mortgage shall be reduced by the value of the property assessed in terms of paragraph (b) of subsection (3) of section *nine*.

## **12 Allocation of property or money between Funds**

Any property acquired or moneys received or paid in terms of this Part by the Minister shall be held by him on behalf of or paid into or out of, as the case may be, the Housing and Guarantee Fund or the National Housing Fund as he may direct.

## **13 No stamp duty, etc.**

No stamp duty, fee of office or other charge shall be payable in respect of anything done by the Registrar of Deeds in terms of subsection (1) of section *eleven*.

## **PART IV**

### **BUILDING FUNDS**

## **14 Establishment of Building Funds**

(1) Notwithstanding anything to the contrary contained in the Audit and Exchequer Act [*Chapter 22:03*], there is hereby established a fund, to be known as the National Housing Fund, which shall be vested in the Minister and of which the Minister shall, subject to this Act, have the sole management.

(2) The Fund established by subsection (1) shall consist of—

- (a) moneys appropriated for the purpose by Act of Parliament;
- (b) moneys received in respect of interest, rents or the realization of any property of, or in respect of any other transaction relating to, the Fund;
- (c) any moneys contributed to the Fund under subsection (3) of section *five*;
- (d) property or leases acquired by the Minister under section *fifteen* or Part III;
- (e) moneys borrowed by the Minister under subparagraph (ii) of paragraph (n) of subsection (1) of section *fifteen*;
- (f) moneys transferred to the Fund under section *seven*;
- (g) any other assets to which the Fund may become entitled.

## **15 Power of Minister under this Part**

(1) The Minister may—

- (a) construct dwellings and other buildings and provide essential services;
- (b) prepare and carry out schemes;
- (c) conduct or give assistance for conducting experimental projects related to the construction of dwellings and other buildings and the equipment and fittings therefor;
- (d) enter into contracts with other persons for the construction of dwellings or other buildings or for the carrying out of schemes;
- (e) on such terms and conditions as he may think fit, undertake, on behalf of other persons—
  - (i) to construct dwellings and other buildings and to provide essential services on land owned or leased by such other persons;
  - (ii) to sell or let the dwellings and other buildings so constructed;
- (f) purchase dwellings or other buildings;
- (g) dispose of the lease of any dwelling or other building acquired by him;
- (h) sell or let any dwellings or other buildings constructed by him or on his behalf or any land, dwellings or other buildings purchased by him under this section or dispose of any lease acquired by him under this section;

- (i) acquire land for the construction thereon of dwellings or other buildings or for the purpose of any scheme, and sell or otherwise dispose of such land;
- (j) on such terms and conditions as he may think fit, make advances to any person for the purpose of purchasing land and building thereon a dwelling or building intended to be used for business or industrial purposes or of building on land owned by the borrower a dwelling or building intended to be used for business or industrial purposes or of purchasing an existing dwelling or building intended to be used for business or industrial purposes;
- (k) on such terms and conditions as he may think fit, advance moneys to any person whether corporate or unincorporated for the purpose of purchasing land and building flats thereon, or of building flats on land owned by the borrower or of purchasing existing flats;
- (l) construct buildings required in connection with the provision of essential services, postal services or banking or building societies services or any other service provided by a local or other authority established by or in terms of any enactment and to let any buildings and to provide essential services for any bank, building society or such authority providing the administration of such services;
- (m) with the approval of the Minister responsible for finance, and on such terms and conditions as they may think fit—
  - (i) make advances—
    - A. to local authorities for the purpose of carrying out schemes approved by the Minister;
    - B. to any person administering any local government area in terms of section 7 of the Urban Councils Act [*Chapter 29:15*] in which a scheme approved by the Minister is being or has been carried out, to enable such person to meet the initial costs of administering such area or to acquire, install, provide and maintain essential services in such area or for both such purposes;
  - (ii) borrow moneys for any of the purposes mentioned in this subsection;
- (n) on such terms and conditions as he may think fit—
  - (i) acquire assets from the State, a local authority or any corporate body or fund established by or in terms of any enactment for special purposes; and
  - (ii) accept responsibility for liabilities in connection with assets referred to in subparagraph (i);
- (o) on such terms and conditions as he may think fit, dispose of assets and liabilities to the State, a local authority or any corporate body or fund established by or in terms of any enactment for special purposes;
- (p) with the consent of the Minister responsible for finance, waive the recovery of any debt owed by a local authority or any corporate body or fund established by or in terms of any enactment for special purposes;
- (q) subject to subsection (2), forestall or avoid the sale in execution of any dwelling by assuming and additionally, or alternatively, settling, on such terms and conditions as he thinks fit, obligations which the owner or occupier of the dwelling has incurred under any contract or by virtue of any judgment.

(2) The powers conferred on the Minister by paragraph (q) of subsection (1) may be exercised only where he is satisfied that—

- (a) the sale in execution of the dwelling concerned will cause undue hardship to the owner or occupier of the dwelling; and
  - (b) the owner or occupier of the dwelling concerned—
    - (i) does not own any other immovable property in an urban area; and
    - (ii) does not own any single item of movable property the value of which exceed fifty thousand dollars;
- and
- (c) the debt or obligation which gave rise to the threatened sale in execution of the dwelling concerned—
    - (i) was incurred for the purpose of purchasing or building the dwelling; and
    - (ii) was not incurred through negligence or improper conduct on the part of the dwelling's owner or occupier;

and, in deciding whether or not to exercise those powers, the Minister shall take into account the amount of the debt or other obligation, the extent to which it has been paid or otherwise discharged, the debtor's ability and willingness to pay or discharge it, and all other relevant circumstances of the case.

(3) For the purposes of this section—

“essential services” includes recreational and educational amenities, roads, water, light, rubbish removal, sewerage and such other services as the Minister may specify for the purposes of this section;

“flat” includes such services as may be approved by the Minister;

“scheme” means a proposal for the construction of dwellings and other buildings and the provision of essential services.

## 16 Transfer of money to another fund

The Minister may, whenever he considers it expedient to do so, after consultation with the Minister responsible for finance, transfer such sum as may be agreed upon by them from the National Housing Fund to the Housing and Guarantee Fund.

## 17 Application of National Housing Fund

- (1) The moneys of the National Housing Fund may be applied towards—
  - (a) any of the purposes set out in section *fifteen*;
  - (b) any decrease in the value of any asset of the Fund;
  - (c) any matter incidental to any of the foregoing.
- (2) The following expenditure losses and liabilities shall be charged to and discharged from the National Housing Fund—
  - (a) any losses incurred in the realization of any asset of the Fund;
  - (b) any moneys or assets transferred to the Housing and Guarantee Fund under section *sixteen*;
  - (c) any expenditure, loss or liability lawfully appertaining to the Fund.

## PART V

### RATES FUNDS

## 18 Establishment of rates funds

(1) Notwithstanding anything to the contrary contained in the Audit and Exchequer Act [*Chapter 22:03*], where the Minister uses moneys from the National Housing Fund for any of the purposes mentioned in paragraph (a) of subsection (1) of section *fifteen* in a declared area referred to in subsection (2) he shall, subject to the provisions of this section, establish a rates fund for such area which shall vest in him and of which he shall, subject to the provisions of this Act, have sole management.

(2) The Minister may, by statutory instrument, declare any area to be a declared area for the purposes of this Part.

(3) Notwithstanding subsection (1) the Minister may establish a central rates fund for several declared areas which he considers are not sufficiently viable to have separate rates funds, in which event such fund shall be vested in him and he shall, subject to this Act, have sole management thereof.

(4) The Minister may at any time declare that any declared area which is associated with a central rates fund shall cease to be so associated with effect from such date as he may specify whereupon the Minister shall establish a rates fund specifically for such area and subsection (1) shall apply, *mutatis mutandis*.

## 19 Application of rates funds

- (1) A rates fund shall consist of—
  - (a) moneys appropriated for the purpose by Act of Parliament;
  - (b) rates, fees, rents, charges and any other revenue of any kind whatsoever derived in respect of occupation or residence in the declared area concerned;
  - (c) licence and other fees accruing under any enactment to the declared area concerned;
  - (d) grants, contributions or advances made from controlled liquor moneys under the Traditional Beer Act [*Chapter 14:24*];
  - (e) gifts, contributions, donations, subscriptions and bequests made to the declared area concerned;
  - (f) moneys received in respect of charges made for the use or occupation of State land in the declared area concerned;
  - (g) loans or grants from the National Housing Fund;
  - (h) income from investments;
  - (i) any other moneys to which the rates fund may become entitled.
- (2) A rates fund shall be chargeable only with—
  - (a) costs in connection with supervising and administering the declared area concerned and the costs of providing, developing and maintaining essential services or any other services for the benefit or the welfare of the occupants or residents of such declared area;
  - (b) costs in connection with the acquisition or construction of buildings for any of the purposes mentioned in paragraph (a), and the maintenance of such buildings;
  - (c) costs in connection with the maintenance of buildings in the declared area concerned whose costs of construction are chargeable to the National Housing Fund:

Provided that any costs so paid shall be recoverable by the rates fund from the National Housing Fund;

- (d) any expenditure, loss or liability lawfully appertaining to the fund;
- (e) such other costs as may be prescribed:

Provided that moneys received under paragraph (g) of subsection (1) shall be applied only to such of the foregoing costs as the Minister may approve or, if he so thinks fit, prescribe.



## **20 Moneys may be held in rates fund on behalf of National Housing Fund**

Notwithstanding anything to the contrary contained in this Part, moneys referred to in paragraph (b) of subsection (2) of section *fourteen* which are owing to the National Housing Fund may be paid into a rates fund and held temporarily in that fund on behalf of the National Housing Fund:

Provided that such moneys shall thereafter be paid to the National Housing Fund in accordance with the directions of the Minister.

## **21 Dissolution of rates fund**

(1) Where a rates fund has been established in respect of a declared area and—

- (a) the control and management of such declared area subsequently becomes vested in a local authority; or
- (b) such declared area is established as the area of a local authority;

such rates fund shall be dissolved, and the assets thereof distributed, in accordance with the directions of the Minister.

(2) Where a declared area which is associated with the central rates fund ceases to be associated with the central rates fund the Minister may distribute in such manner as he thinks fit, moneys which in his opinion constitute the interest of that declared area in the central rates fund.

## **PART VI**

### **RENT CONTROL AND AVOIDANCE OF CERTAIN LEASES**

## **22 Application of Part VI**

(1) Sections 23 and 24 shall apply in relation to domestic premises and any other premises which are not subject to the Commercial Premises (Lease Control) Act [*Chapter 14:04*].

(2) Section 24A shall apply to all premises, including those subject to the Commercial Premises (Lease Control) Act [*Chapter 14:04*].

[Section substituted by section 282 of Act 23 of 2004]

## **23 Rent boards and Rent Appeal board**

(1) The Minister may, by statutory instrument, constitute so many boards, to be known as rent boards, as he may consider necessary, with such areas of jurisdiction as he may specify.

(2) Every rent board shall consist of a chairman and such other members as the Minister considers necessary.

(3) The members of a rent board shall be appointed on such terms and conditions as the Minister may fix for members or classes of members generally and shall be paid such remuneration and allowances, if any, out of moneys appropriated for the purpose by Act of Parliament as the Minister, with the approval of the Minister responsible for finance, may fix.

## **24 Rent regulations**

(1) The Minister may make such regulations as he may consider necessary for the purpose of—

- (a) prescribing the functions, powers and procedure of rent boards and providing for appeals from decisions thereof to the Administrative Court and, more particularly—

- (i) giving every rent board power, whether on behalf of the parties to the proceedings or of its own motion, to summon witnesses and call for the production of documents and to hear evidence under oath;
- (ii) giving every rent board and the Administrative Court power to inspect immovable property;
- (iii) prescribing penalties for contempt of a rent board and for the giving of false evidence in any proceedings thereof;

- (b) notwithstanding anything in the common law, controlling the letting and hiring of any immovable property and the rents charged therefor, and regulating and restricting the powers of the courts to make orders of ejectment against lessees of immovable property, and, more particularly—

- (i) prescribing fees for any application made to a rent board or any authority appointed to carry out any function under such regulations;
- (ii) prescribing charges for acts done or services performed under such regulations;
- (iii) restricting or suspending the rights under the common law of lessors of immovable property, including rights relating to leases entered into before the coming into operation of such regulations;
- (iv) specifying the maximum percentage return on the current market value of immovable property which a lessor may receive as rent in respect of the property after allowing for—
  - A. the amount expended by the lessor in supplying electric current, water, fuel, sanitary or other services and amenities and in meeting the cost of rates in respect of the property;
  - B. the amount expended by the lessor in meeting the cost of insurance premiums in respect of the property, its equipment, furniture and other contents;
  - C. the cost to the lessor in respect of maintenance and cleaning of the property, its equipment, furniture and other contents;

- D. the amount of collection charges;
  - E. the cost to the lessor in respect of the caretaking of the property, its equipment and contents and the upkeep of the grounds;
  - F. any amount expended by the lessor on the provision of furniture and equipment in respect of the property;
- (v) restricting the grounds upon which persons may refuse to let, or the conditions subject to which persons may let, immovable property;
  - (vi) prescribing penalties for contraventions of such regulations.
- (2) Before making regulations for the purposes of subparagraph (iv) of paragraph (b) of subsection (1), the Minister shall consult the Minister responsible for finance.
- (3) In making regulations under subsection (1) the Minister shall have regard to the interests of both lessors and lessees.
- (4) No penalty prescribed by regulations made under subsection (1) shall exceed a fine of level five or imprisonment for a period of six months or both such fine and imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

- (5) For the purposes of subsection (1), “letting” and “lease” include sub-letting and sub-lease, respectively.

#### **24A Avoidance of leases of premises used as brothels**

(1) If an owner or lessor becomes aware that any premises leased by him or her are kept or used as a brothel (as defined in subsection (1) of section 61 of the Criminal Law Code) by or with the consent or acquiescence of the lessee, the lease shall be voidable at the instance of the owner or lessor, who may thereupon repossess the premises.

(2) The reference in subsection (1) to a lease includes a sublease, and “lessee” and “lessor” shall be construed accordingly.

(3) A magistrate shall have jurisdiction, on the application of the owner or lessor of any place within the magistrate’s province which is being kept or used as a brothel, to order summary ejection of any person who is so keeping or using the place.

[Section substituted by section 282 of Act 23 of 2004]

### **PART VII**

#### **GENERAL**

#### **25 Interpretation**

In this Part—

“Fund” means—

- (a) the Housing and Guarantee Fund;
- (b) the National Housing Fund;
- (c) any rates fund.

#### **26 Holding of Funds**

(1) All moneys received by the Minister on behalf of any Fund shall be paid into the banking account of such Fund, and no money shall be withdrawn from any such account except by means of cheques signed by such person or persons as may be specially authorized thereto by the Minister.

(2) Surplus moneys in any Fund which are not immediately required for any of the purposes to which the moneys in that Fund may under this Act be applied may be held in investments approved by the Minister after consultation with the Minister responsible for finance.

#### **27 Accounts and audit**

(1) The Minister shall, in respect of each Fund, cause to be kept proper books of account, and other books and records in relation thereto, in which shall be recorded all the financial transactions of the Fund.

(2) The accounts of each Fund shall be audited by the Comptroller and Auditor-General, who shall have all the powers conferred upon him by the Audit and Exchequer Act [*Chapter 22:03*].

#### **28 Powers of entry and inspection**

(1) Any person generally or specially authorized thereto by the Minister may at any reasonable hour in the day-time after reasonable notice given to the occupier thereof, if any, enter upon any—

- (a) dwelling or building which has been acquired or erected, or land which has been acquired, or any dwelling, building or land the lease of which has been acquired, by means of a loan for which a guarantee has been given under this Act, while such guarantee remains in force;
- (b) dwelling, building or land which has been acquired by means of an advance made under paragraph (k) of subsection (1) of section *fifteen* while any amount of such advance is owing to the National Housing Fund;
- (c) dwelling or other building which has been let by the Minister under this Act;

- (d) dwelling or other building which has been sold by the Minister under this Act and in respect of which any amount is owing to a Fund;
- (e) land on which a scheme mentioned in section *fifteen* is being carried out;
- (f) dwelling or other building or other works forming part of any such scheme;
- (g) building or works forming part of any essential service mentioned in section *fifteen* and in respect of which any amount is owing to a Fund;

to make any inspection or to perform any work or do anything which may reasonably be necessary or which is provided for in any agreement entered into with the Minister or has been included in any conditions imposed by the Minister under this Act.

(2) Any person who fails to give or refuses access to any person mentioned in subsection (1) or obstructs or hinders him in the lawful exercise of the powers conferred upon him by this section shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

## **29 Remedy of Minister against defaulting mortgagors**

(1) In respect of any mortgage of immovable property in favour of the Minister entered into on or after the 1st November, 1963, if—

- (a) any sum of money, whether principal or interest, due in terms of the mortgage is unpaid three months after the date upon which payment was due; or
- (b) there is a breach of any other term or condition of the mortgage; or
- (c) the property is attached in pursuance of a judgment of a competent court;

the Minister may, by any person authorized by him in writing—

- (i) after written notice of the prescribed period and in the prescribed manner has been given to the mortgagor and without recourse to a court of law, enter upon and take possession of the property and sell it by public auction or by inviting tenders:

Provided that in the circumstances mentioned in paragraph (c) the Minister may so enter upon, take possession of and sell the property without giving such notice; and

- (ii) transfer the property to the purchaser and give a good and valid title to the property:

Provided that no such sale shall take place until it has been advertised in the manner prescribed.

(2) Any person having an interest in such sale may within one month of such sale apply to the Administrative Court to have it set aside on the ground that it was improperly conducted or the property was sold for an unreasonably low sum or any other good grounds, and that court may thereupon make such order as it considers fit.

(3) The surplus, if any, of the proceeds of such sale after payment of any claim which in insolvency would rank in preference to the claim of the Minister and after payment of all amounts owing to the Minister and any costs incurred by him shall be paid—

- (a) if the property is subject to a mortgage in favour of a person other than the Minister, to such person upon production of evidence as to the amount owing thereunder:

Provided that no such payment shall be made until at least seven days' notice thereof has been given to the mortgagor in the prescribed manner, and if the mortgagor objects to the amount being so paid, the surplus shall be transmitted to the Guardian's Fund for payment to the person entitled thereto;

- (b) in the case of property referred to in paragraph (c) of subsection (1), to the Sheriff;
- (c) in all other cases, to the mortgagor or his legal representative.

(4) For the purposes of subparagraph (ii) of subsection (1), should the title deed of the property concerned be lost or otherwise unobtainable, then, upon application by the Minister, after advertisement has been made in the manner provided under the Deeds Registries Act [*Chapter 20:05*], the Registrar of Deeds shall, if he is satisfied that no good reason to the contrary exists, issue to the Minister a certified copy to take the place of such deed.

## **30 Financial year**

The financial year of each Fund shall end on the 30th June in each year.

## **31 Regulations**

The Minister may make—

- (a) regulations as to all matters which by this Act are required or permitted to be prescribed; and
- (b) such regulations as to him seem necessary or expedient for the carrying out of the objects and purposes of this Act or for its proper administration.

## **32 Registration of immovable property**

(1) Any immovable property acquired by the Minister under the powers conferred upon him by this Act shall be registered in the name of the Minister holding such property on behalf of the Fund concerned.

(2) In respect of such property the Registrar of Deeds shall make all the necessary endorsements on the title deeds and in his register, and no stamp duty, fee of office or other charge shall be payable in respect of anything done by the Registrar of Deeds in terms of this subsection.

### **33 Liquor licence not to be issued to boarding-house in respect of which a guarantee is in force**

Notwithstanding anything to the contrary contained in the Liquor Act [*Chapter 14:12*], no licence for the sale of liquor shall be granted under that Act in respect of any boarding-house in respect of which any amount has been guaranteed under subsection (1) of section *four* until the guarantee has been extinguished.

### **34 Savings in respect of changes of areas**

Notwithstanding this Act, a change in the area for which powers connected with any Fund may be exercised, whether such change has been effected by reason of any amendment to this Act or otherwise, shall not affect the previous exercise of that power in relation to the area concerned and that power may continue to be exercised in respect of the area concerned.