
CHAPTER 314A**BAHAMAS CO-OPERATIVE CREDIT UNIONS**

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CHAPTER 314A

BAHAMAS CO-OPERATIVE CREDIT UNIONS

An Act to provide for the continuance, registration, supervision and management of Co-operative Credit Unions and for connected purposes. *9 of 2015*

[Assent 12th May, 2015]

[Commencement 1st June, 2015]

**PART I
PRELIMINARY**

1. This Act may be cited as The Bahamas Co-operative Credit Unions Act. Short title.

2. (1) In this Act — Interpretation.

“Apex Body” means the National League or other like body for cooperative credit unions referred to under section 111;

“Board” means the board of directors of a co-operative credit union referred to under section 47;

“bonus” means the equitable return to a member of a co-operative credit union from net surplus after allocation to the statutory reserve and the stabilisation fund;

“bye-laws” mean the registered bye-laws made by a co-operative credit union pursuant to this Act;

“capital” means the statutory reserves, retained earnings, qualifying shares and equity shares of a co-operative credit union;

“Central Bank” means the Central Bank of The Bahamas established under section 3 of the Central Bank of The Bahamas Act; Ch. 351.

“co-operative credit union” means a voluntary, co-operative, non-profit financial institution that may accept savings deposits and provide other financial services to members pursuant to the provisions of this Act, and “credit union” shall be construed accordingly;

“deposit” means the unpaid balance of money or its equivalent received or held by a co-operative credit union from or on behalf of a person in the usual course of business and for which the institution has given or is obliged to give credit to that person’s checking, saving, demand or time account or for which the institution has issued a certificate, receipt, cheque, money order, draft or other instrument in respect of which it is primarily liable;

“director” means a member of the Board;

“dividend” means a payment made to members from the net surplus of a co-operative credit union divided among members in proportion to the qualifying and equity shares;

“domestic regulatory authority” means an authority in The Bahamas that regulates or supervises financial institutions;

“equity shares” mean those shares held by a member that are in excess of the qualifying shares, the value of which are prescribed by bye-laws;

“foreign regulatory authority” means an authority in a jurisdiction outside The Bahamas that regulates or supervises foreign financial institutions;

Ch. 351.

“Governor” means the person appointed as Governor under the Central Bank of The Bahamas Act;

Ch. 316.

“Inspector” means the Office of Inspector of Banks and Trust Companies established under section 13 of the Banks and Trust Companies Act;

“liquidity deposit” means funds maintained by a co-operative credit union to ensure that it can meet its commitments with respect to loans, withdrawals of deposits, and payment of accounts to fund its operations;

“management” means persons who are employed by the Board or such committee so designated by the Board to manage the operations of the co-operative credit union;

“Minister” means the Minister responsible for Finance;

“non-profit company” has the meaning assigned to it under the Companies Act;

Ch. 308.

“patronage rebate” means the returns to members of a co-operative credit union from net surplus, allocated in proportion to the volume of business each individual has done with the co-operative credit union during the preceding financial year;

“provisional directors” mean members of the Steering Committee who will hold office after registration, and until the Board is elected at the first annual general meeting;

“qualifying shares” mean the mandatory, non-withdrawable minimum shares to be purchased by an approved applicant to be admitted;

“Registrar General” means the person appointed as Registrar General under section 4 of the Registrar General Act;

Ch. 186.

“stabilization fund” means a facility to provide technical assistance advice and limited financial assistance to co-operative credit unions that are insolvent or likely to become insolvent;

“statutory reserve” means funds allocated from retained earnings solely for the purpose of increasing and enhancing capital until total statutory reserves equal ten percent of the total assets.

(2) In this Act, a reference to the Registrar General shall also be construed as a reference to any other public officer who has the responsibility for the receipt and registration of documents relating to co-operative credit unions.

3. (1) This Act applies to co-operative credit unions registered under this Act or deemed, by virtue of section 126(1), to be registered under this Act.

Application of Act and use of the words “co-operative credit unions”.

(2) No person other than a registered co-operative credit union shall trade or carry on business under any name or title of which the words “co-operative credit union” or “co-operative credit unions” or any abbreviation thereof, is a part.

Co-operative
principles.

4. (1) A co-operative credit union registered under this Act shall comply with the co-operative principles specified under subsection (2).

(2) For the purpose of this Act, a co-operative credit union complies with the co-operative principles if —

- (a) no member or delegate has more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its business is carried on primarily for the benefit of its members;
- (d) its membership is voluntary and available without any artificial restriction or any unlawful basis of discrimination to any person who can use its services and is willing to accept the responsibilities of membership;
- (e) the limit on dividends on share capital and qualifying shares that it pays does not exceed the rate prescribed in the bye-laws;
- (f) any surplus or savings out of the co-operative credit union's operations is used for one or more of the following purposes —
 - (i) to develop its business;
 - (ii) to provide or improve common services to members;
 - (iii) to be distributed among members in proportion to their patronage with the co-operative credit union;
 - (iv) to educate its members, officers or employees or the general public on the principles and techniques of economic and democratic co-operation;
 - (v) to be contributed to non-profit charitable benevolent organisations;
 - (vi) to be contributed to equity until total equity equals ten percent of total assets; and
 - (vii) to pursue co-operation with other co-operative credit unions.

(3) Without prejudice to subsection (1), a co-operative credit union may, with the permission of the Central Bank, do all other acts and things as are incidental or conducive to or consequential to the attainment of its objectives.

PART II
ADMINISTRATION OF CO-OPERATIVE CREDIT UNIONS

5. (1) The Central Bank is responsible for —
- (a) the general administration of this Act;
 - (b) determining the financial soundness of co-operative credit unions;
 - (c) supervising co-operative credit unions;
 - (d) registering co-operative credit unions;
 - (e) protecting members' deposits and shares from undue loss;
 - (f) monitoring compliance of co-operative credit unions with the provisions of this Act or any other relevant law; and
 - (g) monitoring the conformity by co-operative credit unions with the co-operative principles referred to under section 4.
- (2) In the discharge of its responsibilities under this Act, the Central Bank may —
- (a) process applications and issue certificates of registration to new co-operative credit unions;
 - (b) vary, restrict or revoke certificates of registration;
 - (c) establish prudential criteria to be met by co-operative credit unions;
 - (d) obtain information in such form as the Central Bank may require, in writing, from time to time;
 - (e) perform assessments of the risk profile and the safety and soundness of co-operative credit unions;
 - (f) conduct on-site examinations of co-operative credit unions and submit to the relevant co-operative credit union, any report produced from the examinations conducted;
 - (g) conduct continuous off-site assessment of the financial condition and performance of co-operative credit unions;
 - (h) prepare and issue guidelines concerning prudential standards and for the prevention of money laundering and financing of terrorism;

Central Bank to administer the Act.

- (i) take any other action deemed necessary to ensure the soundness of the co-operative credit union industry in accordance with this Act.

(3) Where the Central Bank has reasonable grounds to believe that an affiliate or officer of a co-operative credit union commits or pursues or is about to commit or pursue any act or course of conduct that is detrimental to the interests of its members or depositors, or violates any of the provisions of this Act, the regulations, or bye-laws, the Central Bank may direct the co-operative credit union to rectify such acts or course of conduct.

Annual report.
Ch. 351.

6. The Central Bank shall include in its annual report, pursuant to section 32 of the Central Bank of The Bahamas Act, information relating to the performance of the co-operative credit union industry.

PART III REGISTRATION OF CO-OPERATIVE CREDIT UNIONS

Register of co-
operative credit
unions.

7. (1) The Central Bank shall keep and maintain a register of co-operative credit unions to which the Central Bank has issued certificates of registration to carry on business in The Bahamas or which are deemed to be registered pursuant to section 126 (1).

(2) The register shall contain the following particulars relating to a co-operative credit union —

- (a) the name of the co-operative credit union;
- (b) the registration number of the co-operative credit union;
- (c) the address of the co-operative credit union;
- (d) the date of the registration of the co-operative credit union;
- (e) such other particulars as the Central Bank may determine.

(3) A co-operative credit union registered or deemed to be registered under this Act shall inform the Central Bank of any change in that co-operative credit union's address or in any other particulars relating to that co-operative credit union.

Application for
registration.

8. (1) No co-operative credit union may commence business unless it is registered under this Act.

(2) Subject to subsection (3), an application for registration under this Act shall be submitted to the Central Bank in such form as the Central Bank may determine.

(3) An application for registration under subsection (2) shall be signed by at least thirty persons who desire to be members of a co-operative credit union and who satisfy the requirements for membership under this Act.

(4) An application for registration made pursuant to subsection (2) shall —

- (a) be accompanied by —
 - (i) the prescribed application fee;
 - (ii) two copies of the bye-laws;
 - (iii) a business plan for the first three years of operation providing a detailed explanation of actions which the co-operative credit union intends to accomplish and the primary functions of the co-operative credit union; and
 - (iv) such other information relating to the co-operative credit union as the Central Bank may determine;
- (b) be submitted in duplicate;
- (c) include —
 - (i) the proposed name of the co-operative credit union;
 - (ii) the street address of the co-operative credit union's principal place of business;
 - (iii) a declaration that the co-operative credit union's term of existence is perpetual;
 - (iv) a declaration of the co-operative credit union's fiscal year;
 - (v) the aggregate value of all initial shares;
 - (vi) the name and address of, and the number of non-withdrawable qualifying shares subscribed by, each organizer;
 - (vii) the number of directors constituting the initial Board and the name and address of each person who will serve as a director until the first annual meeting; and
 - (viii) the defining bond of association shared by the members of the co-operative credit union at the time of registration.

Conditions for
registration.

9. (1) Subject to subsection (2), no group may be registered or no co-operative credit union having been registered may continue to be so registered under this Act —

- (a) unless its membership consists of individuals who are fifteen years and older;
- (b) unless it is considered to be economically viable by the Central Bank, having assessed the demand for its proposed services, the potential size of the co-operative credit union, its membership and capital base;
- (c) unless there is conformity among its membership with all co-operative principles as set out in section 4;
- (d) unless the word “limited” is the last word of the name of a co-operative credit union to be registered with limited liability;
- (e) if the name of the co-operative credit union is identical with that of another co-operative credit union or which so nearly resembles that name as to be likely to mislead the members of the public as to its identity;
- (f) unless it has and maintains an address to which all notices and communications may be sent;
- (g) unless its bye-laws are in conformity with this Act;
- (h) unless the registered name of the co-operative credit union is prominently displayed in a conspicuous position on the outside of every office or place in which the business of the co-operative credit union is carried on, from the date of commencement of the co-operative credit union’s operations;
- (i) unless its managers are deemed to be fit and proper persons.

(2) The membership of a co-operative credit union registered under this Act shall comprise of at least one hundred members.

Registration of a
co-operative
credit union.

10. (1) Where the Central Bank is satisfied that an application for registration has been made in accordance with this Act, the Central Bank shall register a co-operative credit union, subject to such terms and conditions, if any, as the Central Bank may determine, approve its bye-laws

and issue that co-operative credit union with a certificate of registration.

(2) The Central Bank shall cause the name under which a co-operative credit union is registered to be published on its website or in such other manner as the Central Bank may determine.

(3) Where the Central Bank refuses to register a co-operative credit union, the Central Bank shall give the applicant reasons in writing for the refusal.

(4) The Central Bank shall inform the Minister of its decision, where the Central Bank registers or refuses to register a co-operative credit union.

(5) A co-operative credit union registered under this Act shall carry on its business in accordance with its bye-laws.

(6) No co-operative credit union may engage in any business other than that which is connected with its objectives or which is reasonably incidental thereto.

11. (1) A co-operative credit union comes into being on the date inscribed on the certificate of registration.

Certificate of registration.

(2) A certificate of registration issued by the Central Bank to a co-operative credit union is admissible in evidence as conclusive proof that the cooperative credit union named in the certificate is registered pursuant to this Act and has complied with all the requirements for registration.

12. The registration of a co-operative credit union shall render it a body corporate by the name under which it is registered with perpetual succession and a common seal with power to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its bye-laws.

A co-operative credit union to be a body corporate.

13. A co-operative credit union shall have its certificate of registration prominently displayed at its registered address.

Display of certificate.

14. (1) The Central Bank shall, prior to the suspension or cancellation of the registration of a co-operative credit union, give that co-operative credit union an opportunity to be heard.

Suspension and cancellation of registration.

(2) Subject to this Act, the Central Bank may by order in writing suspend the registration of a co-operative credit union, where the Central Bank is satisfied that —

- (a) the co-operative credit union is in breach of any condition of registration;
- (b) the co-operative credit union is in breach of any requirement of section 13 or 15;
- (c) the co-operative credit union or any officer, Board or committee member thereof has failed or refused to comply with the provisions under this Act, the regulations or the bye-laws; or
- (d) the co-operative credit union or any officer, Board or committee member thereof has failed or refused to comply with any order or request made by the Central Bank under this Act.

(3) Where the Central Bank suspends the registration of a co-operative credit union, such suspension shall not exceed twelve months.

(4) Where after a period of suspension a co-operative credit union has not rectified the circumstances leading to its suspension, the Central Bank may cancel the registration of that co-operative credit union.

(5) The Central Bank may by order in writing cancel the registration of a co-operative credit union if—

- (a) at any time it is proven that the number of members has been reduced to less than one hundred members who are above the age of fifteen years, except in the case of an Apex Body which includes among its members one or more registered co-operative credit unions;
- (b) it is proven that the registration has been obtained by fraud or mistake;
- (c) the co-operative credit union goes into liquidation or is wound up.

(6) An order under subsection (2) or (3) shall take effect from the date of the order.

(7) Where the registration of a co-operative credit union is cancelled by order under this section the co-operative credit union shall, except for the purpose of winding up, cease to exist as a body corporate from the date on which the order takes effect.

(8) Where the Central Bank suspends or cancels the registration of a co-operative credit union, the Central Bank may cause notice of such suspension or cancellation to be published on its website or in such other manner as the Central Bank may determine.

15. (1) There shall be made available at all reasonable times at the registered address of a co-operative credit union — Records.

- (a) a copy of this Act and any regulations made thereunder;
- (b) a copy of the bye-laws;
- (c) the register of members;
- (d) the minutes of all meetings and resolutions of the co-operative credit union's members, directors and committees; and
- (e) such other records prescribed in the bye-laws.

(2) A co-operative credit union shall hold the following records —

- (a) the minutes of all meetings and resolutions of its members, directors and committees;
- (b) all financial records, statements and audits;
- (c) the register of members;
- (d) records relating to the amalgamation of the co-operative credit union with any other co-operative credit union; and
- (e) such other records as may be prescribed in the bye-laws.

16. (1) A co-operative credit union that is registered under this Act and having less than one million dollars in assets is exempt from the requirements of section 65(2) (b) and (c). Exemption of small co-operative credit unions.

(2) The annual statutory reserve allocation requirement for a co-operative credit union referred to under subsection (1) shall be, in the case of a co-operative credit union having total assets of—

- (a) less than one hundred thousand dollars, one percent of the co-operative credit union's total assets;
- (b) one hundred thousand dollars or more but less than three hundred thousand dollars, three percent of the co-operative credit union's total assets;

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- (c) three hundred thousand dollars or more but less than five hundred thousand dollars, five percent of the co-operative credit union's total assets;
 - (d) five hundred thousand dollars or more but less than seven hundred and fifty thousand dollars, seven percent of the co-operative credit union's total assets;
 - (e) seven hundred and fifty thousand dollars or more but less than one million dollars, nine percent of the co-operative credit union's total assets.
- (3) Notwithstanding any other provisions of this Act, a co-operative credit union referred to under subsection (1) shall —
- (a) substitute the submission of annual unaudited financial statements for the submission of annual audited financial statements required pursuant to sections 86(7) and 87(1);
 - (b) submit the returns required pursuant to section 87, to the Central Bank on a quarterly basis, but in any case not later than the twentieth day of the month next following the end of the preceding quarter.

PART IV
FIRST ANNUAL GENERAL MEETING, ANNUAL
GENERAL MEETING, ETC.

First annual
general meeting.

17. (1) A co-operative credit union shall, within three months of the date of its registration, hold its first annual general meeting, at which time all members are entitled to be present and to vote.

(2) Notwithstanding subsection (1), where the directors apply to the Central Bank, the Central Bank may extend the time for holding the first annual general meeting.

(3) The business at the first annual general meeting referred to under subsection (1) shall include —

- (a) the adoption of the bye-laws;
- (b) the election of directors and the supervisory committee; and
- (c) the appointment and election of credit committee members pursuant to section 48(3).

18. (1) Subject to its bye-laws, a co-operative credit union shall hold an annual general meeting each year, not later than six months after the end of the financial year of the co-operative credit union and within thirty days after the acceptance by the Board of the annual audited financial statements.

Annual general meetings.

(2) A co-operative credit union shall —

- (a) make available to its members the annual audited financial statements, seven days prior to the annual general meeting; and
- (b) submit the annual audited financial statements to the Central Bank thirty days prior to the annual general meeting.

19. (1) Subject to the bye-laws, a special general meeting may be called —

Special general meetings.

- (a) by the directors; or
- (b) by the Board, upon a written request specifying the purpose of the meeting by a minimum of—
 - (i) twenty-five members for co-operative credit unions with less than one thousand members;
 - (ii) fifty members for co-operative credit unions with more than one thousand members but less than three thousand members;
 - (iii) one hundred members for co-operative credit unions with three thousand members or more.

(2) The special general meeting referred to under subsection (1), may be called only to address the subject matter specified in the request.

(3) Notwithstanding subsection (1), the Central Bank may call a special meeting of a co-operative credit union —

- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative credit union's affairs ordered by the Central Bank; or
- (b) where the co-operative credit union fails to hold an annual general meeting in accordance with section 18 or a special general meeting in accordance with subsection (1).

Notice of
meeting.

20. (1) A co-operative credit union shall give at least ten days' notice of an annual general meeting or a special general meeting to its members —

- (a) by electronic communication;
- (b) by sending the notice by mail to the members at the address given in the register of members; or
- (c) in such other manner as may be prescribed in the regulations or the bye-laws.

(2) A notice of an annual general meeting or a special general meeting shall specify the purpose for which the meeting is being called.

(3) An annual general meeting or a special general meeting shall be held in The Bahamas at a place selected by the directors.

(4) The proceedings or the business transacted at a general meeting are deemed not to be invalidated by reason only of the non-receipt by a member of a notice of the meeting.

Annual
declaration.

21. (1) The Board shall make, in such form as the Central Bank may determine, an annual declaration at the annual general meeting —

- (a) attesting to the compliance of the co-operative credit union with this Act and the regulations;
- (b) attesting to the fitness and propriety of its elected officials; and
- (c) providing an updated listing of the composition of the Board, supervisory and credit committees.

(2) The declaration referred to under subsection (1) shall be submitted to the Central Bank within thirty days prior to the annual general meeting.

Quorum.

22. (1) Subject to subsection (2), the quorum at any annual, general or special meeting of members of a co-operative credit union shall be —

- (a) twenty-five, for co-operative credit unions with less than one thousand members;
- (b) fifty, for co-operative credit unions with more than one thousand members but less than three thousand members;
- (c) one hundred, for co-operative credit unions with three thousand members or more;
- (d) for an Apex Body, a simple majority.

(2) Where a quorum is not present one hour after the time fixed for the commencement of the meeting of members, the meeting shall proceed and the members present shall constitute a quorum.

23. (1) Where the bye-laws provide for the nomination and appointment of delegates at a general meeting — Delegates.

- (a) the delegates shall exercise the powers of membership at any annual general meeting or special general meeting; and
- (b) any reference in this Act with respect to the exercise of any power mentioned in paragraph (a) shall be construed as a reference to delegates.

(2) The members who elect delegates may, at a special general meeting called for that purpose or at the annual general meeting, remove the delegates in any manner provided for in the bye-laws.

PART V RIGHTS AND LIABILITIES OF MEMBERS

24. (1) A person shall be eligible for membership of a co-operative credit union, where that person — Qualifications for membership.

- (a) is either a citizen or a resident of The Bahamas;
- (b) has attained the age of fifteen;
- (c) is of sound mind; and
- (d) has with the other members of the co-operative credit union some common bonds of philosophy, occupation or association or of residence in a defined neighbourhood or district.

(2) Subject to the approval of the Central Bank, a registered society may be a member of a co-operative credit union.

(3) A non-profit company may become a member of a co-operative credit union provided that the majority of the officers of the non-profit company are members of the co-operative credit union.

(4) A company incorporated in The Bahamas under the Companies Act is eligible for membership of a co-operative credit union provided that the majority ownership of the company is held by members of the co-operative credit union. Ch.308.

(5) A purchaser under any execution or any other person succeeding by operation of law or otherwise to the share or interest of another member in a co-operative credit union shall not be entitled to membership by virtue only of such purchase or transfer.

(6) A person, including a minor, who is duly admitted to membership shall enjoy all the rights of that co-operative credit union and shall be subject to the liabilities of membership and any other liabilities existing in law.

(7) Without prejudice to anything contained in this section, provision may be made in the bye-laws in respect of qualifications for membership.

Application for membership.

25. An application for membership of a co-operative credit union shall be submitted to the Board in the form prescribed in the bye-laws.

Membership requirements.

26. No person may exercise the rights of membership of a co-operative credit union unless and until he has acquired such number of qualifying shares, and has satisfied any other requirement as may be prescribed in the bye-laws.

Register of members and shares.

27. A co-operative credit union shall keep a register of members and qualifying shares in which shall be recorded —

- (a) the names and addresses of members and the number of shares held by each member;
- (b) the date on which each member became a member, and the date if any, on which he ceased to be a member; and
- (c) the nominees appointed by the members.

Withdrawal of membership.

28. (1) A member of a co-operative credit union may at any time withdraw from membership on such condition as may be prescribed in the bye-laws.

(2) The withdrawal from a co-operative credit union shall be by written notice addressed to the secretary of the Board.

(3) The withdrawal from a co-operative credit union shall not affect any existing liability of the member of the co-operative credit union.

Voting rights.

29. (1) There shall be no voting by proxy.

(2) A member of a co-operative credit union shall have one vote except where such member is the chairman of any meeting of the co-operative credit union in which case if there is an equality of votes he shall have a casting vote in addition to his original vote.

(3) A co-operative credit union that is a member of another co-operative credit union shall exercise its voting rights in that other co-operative credit union through one of its members duly appointed as a delegate pursuant to section 23.

30. Subject to this Act, the liability of a current member of a co-operative credit union is limited to the paid up amount of his qualifying and equity shares.

Liability of current members.

31. Where the member of a co-operative credit union ceases to qualify for membership as prescribed in the bye-laws, the Board shall cause his name to be removed from the register of members and such removal shall not affect any existing liability of that member.

Cessation of membership.

PART VI

BUSINESS OF CO-OPERATIVE CREDIT UNIONS

32. (1) A co-operative credit union may issue equity shares to its members.

Shares.

(2) A co-operative credit union with a share capital may sell shares to its members but such shares shall have their par value set out in the bye-laws.

(3) Except a co-operative credit union is required by law to have limited shareholding, a co-operative credit union shall have an unlimited number of equity shares.

(4) A co-operative credit union shall sell its shares at their par value.

(5) A share in a co-operative credit union is personal property and a shareholder is entitled to an annual statement showing the number of shares that he owns.

(6) A qualifying share may not be used as collateral for a loan.

(7) The procedure for the withdrawal of equity shares shall be prescribed in the bye-laws.

33. (1) Subject to section 65, any surplus may be distributed by way of dividend, bonus, or patronage rebate amongst its members in proportion to their shares and their

Dividend, bonus etc.

patronage with the co-operative credit union at such rate as is recommended by the directors and ratified by the members at the annual general meeting.

- (2) A co-operative credit union shall not —
- (a) pay dividends on shares or bonuses or distribute any part of its accumulated funds before the financial statements have been certified by an auditor appointed by the Board under section 86(1);
 - (b) pay a dividend or make any payment on account or out of its surplus unless the requirements under section 65(2)(b) have been complied with.

(3) A patronage rebate calculated in proportion to the amount of the business done by each member with the co-operative credit union may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after making provision for the allowance for doubtful loans and making allocation for the statutory reserve, stabilisation fund and dividends.

Limitations on shareholding.

34. Where the liability of the members of a co-operative credit union is limited by shares, no member may hold more than one-fifth of the outstanding paid up shares of that co-operative credit union except where a co-operative credit union is a member of an Apex Body.

Transfer of shares generally.

35. (1) A share may be transferred to any other member at the option of the transferor, but where the transferee is not a member, the Board, or the members present at a general meeting shall, according to the by-laws relating to the admission of members, approve that transfer before the transfer can be registered.

(2) A transfer of shares shall be effected in such form as the Central Bank determines.

(3) No transfer of a share shall be valid and effective unless and until such transfer has been registered by the secretary on the direction of the Board.

(4) No transfer of a share shall be registered without the written permission of the Board where that transfer is made by a member indebted to the co-operative credit union, and where that transfer of a share is registered by the transferee, any claim by the co-operative credit union upon the transferor is not affected by the transfer.

36. (1) Where a member or person claiming through a co-operative credit union is of unsound mind or is incapable of managing his affairs and no committee, receiver or guardian has been appointed, the co-operative credit union may, subject to this section and section 39, transfer the share or interest of such member to any person nominated by such member for the purposes of section 40 or may pay to the person nominated a sum representing the value of the share or interest of such member ascertained in accordance with subsection (5).

Transfer of shares of a member who is of unsound mind.

(2) Subject to subsection (3), if no nominee has been appointed, the co-operative credit union may pay a sum representing the value of the member's share or interest to the Registrar of the Supreme Court.

(3) If the value of the share or interest does not exceed five hundred dollars, the Board may, subject to any conditions it thinks fit, pay the whole or any portion of such sum to the person who is responsible for the care or management of the affairs of the member referred to under subsection (1).

(4) A transfer and payment made by a co-operative credit union in accordance with this section shall be valid and effective against any demand made upon the co-operative credit union by any person.

(5) For the purposes of this section, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the bye-laws otherwise provide.

37. (1) A co-operative credit union has a lien on the shares or amount outstanding to the credit of a member or his legal personal representative for a debt due by that member or shareholder to that co-operative credit union.

Lien on shares.

(2) A co-operative credit union may enforce a lien referred to under subsection (1) in the manner set out in its bye-laws.

(3) The Board may, in default of payment by any member indebted to a co-operative credit union, apply the sum paid up for the time being on any equity shares or deposits held by the member in or toward the discharge of the debt so due and in any expense in or about the same, and the defaulting member shall cease to have any further claim in respect of such shares or deposits.

Restriction on transfer of equity share or interest in capital.

38. (1) Subject to subsection (2), the transfer of a share or interest of a member or deceased member in the capital of a co-operative credit union shall be subject to such conditions specified under this Act.

(2) No share or interest or any part thereof in the capital of a co-operative credit union may be transferred unless the transfer is made to a member or to a person whose application for membership has been accepted.

Power of nomination.

39. (1) A member of a co-operative credit union may by instrument in writing —

(a) signed by such member in the presence of two attesting witnesses and delivered at or sent to the registered office of the co-operative credit union during the lifetime of such member; or

(b) made in any book kept at the registered office, nominate any person to or among whom there shall be transferred at his death, in whole or in part as may be specified in such nomination, such property in the co-operative credit union in shares or deposits, and accruals thereon, of which he is the owner at the time of his death.

(2) A nomination made pursuant to subsection (1) may be revoked or varied by a —

(a) subsequent nomination, signed, attested and delivered or sent or made in the same manner as the original nomination; or

(b) similar document in the nature of a revocation or variation signed by the nominator in the presence of two attesting witnesses and delivered, sent or made in the same manner as a nomination,

but the revocation or variation may not be made by the will of the nominator or by any codicil to such will.

(3) All nominations and all revocations or variations thereof delivered or sent to a co-operative credit union shall be recorded in a book kept at the registered office of the co-operative credit union.

Transfer of share or interest on death.

40. (1) Where a person has been nominated as beneficiary by a member in accordance with the bye-laws and such nominee is admitted to membership in that co-operative credit union, the co-operative credit union shall within one year of the death of the member by whom the

nomination was made, transfer to the nominee the share or interest of the deceased member to the limit specified in subsection (4).

(2) Where no nominee is admitted to membership in the co-operative credit union or where the deceased member made no such nomination, the cooperative credit union shall upon production of the death certificate of such deceased member, pay to the nominee or legal personal representative of the deceased member, as the case may be, such sum, not exceeding the limit specified in subsection (4), representing the value or part thereof of the deceased member's shares or interest in the co-operative credit union.

(3) Nothing in this section shall be construed as prohibiting a nominee who has been admitted to membership from electing to receive payment representing the value of the deceased member's shares or interest instead of accepting a transfer.

(4) Unless prevented by order of a court of competent jurisdiction, a co-operative credit union —

- (a) shall pay such nominee or legal personal representative as the case may be, the sum due to the deceased member from the co-operative credit union;
- (b) may apply the sum paid up for the time being on any equity shares or deposits held by the member at the time of his death in or toward the discharge of any debt so due to the co-operative credit union and any expense in or about the same, and the member's estate shall cease to have any further claim in respect of such shares and or deposits.

41. (1) A member to whom money has been lent by a co-operative credit union or who is otherwise indebted to the co-operative credit union may be required to create and execute a charge in favour of the co-operative credit union in such form and in accordance with such procedures as may be prescribed by the Registrar General.

Creation and
execution of a
charge.

(2) The Registrar General shall register every charge transmitted to him by the co-operative credit union, and issue to the co-operative credit union a certified copy of the registration.

(3) The registration of a charge under subsection (2) shall constitute a security in favour of the co-operative credit union and shall be deemed to affect with notice any person dealing with the property comprised in the charge.

(4) A charge shall, so long as it continues in force, confer on the co-operative credit union the following obligations —

- (a) the right upon the happening of any event specified in the charge as being an event authorising the chargee to seize the property subject to the charge to take possession of any property so subject;
- (b) after an interval of five clear days or such less time as may be specified in the charge from the date of taking possession of any property subject to the charge, to sell such property either by auction or, if the charge so provides, by private treaty and either for a lump sum or payment by installments;
- (c) to apply the proceeds of sale in or towards discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property was sold.

(5) A charge shall, so long as it continues in force, impose on the member the obligation to pay to the co-operative credit union towards the discharge of his indebtedness the proceeds of sale of any property comprised in the charge or any money received under a policy of insurance or by way of compensation in respect of any such property, except insofar as the charge otherwise allows.

(6) For the avoidance of doubt, a charge under this section is not a bill of sale within the meaning of the Sale of Goods Act.

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Enforcement of a charge.

42. A co-operative credit union may enforce a charge —

- (a) by applying to a Magistrate of the district in which the member resides or carries on business or where the property subject to the charge is situated for a warrant of distress by certifying under seal to the Magistrate, in accordance with its bye-laws, the amount due and particulars of the property so charged and the Magistrate shall

issue a warrant of distress and may order the sale of the property by public auction or private treaty; or

- (b) in the Supreme Court in any case where a Magistrate lacks the jurisdiction to enforce the charge.

43. (1) A co-operative credit union may borrow from any other financial institution on the security of any charge executed and registered in accordance with section 41 and may for this purpose assign any such charge to the other financial institution.

Assignment of a charge.

(2) An assignment of a charge under this section shall be registered in the same manner as a charge under section 41 and that section shall apply *mutatis mutandis* to an assignment of a charge so registered.

(3) An assignment or charge when registered shall operate as a first charge in favour of the assignee subject to section 36.

(4) Where any charge is assigned to a co-operative credit union established with the object of facilitating the operations of other co-operative credit unions, that co-operative credit union may borrow from any bank approved by the Central Bank and for this purpose may re-assign any such charge to such bank and subsections (2) and (3) shall apply *mutatis mutandis* to such re-assignment.

(5) For the purposes of this section “financial institution” has the same meaning under section 3(1)(a), (b), (c), (f) or (j)(i) of the Financial Transactions Reporting Act.

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44. (1) A co-operative credit union may require a member or officer to give a bond with or without surety as additional security for repayment of any loan and any condition thereby imposed on the member or officer relating to the payment of capital and interest shall be strictly observed and performed and on breach of any such condition the bond shall be immediately forfeited.

Bond as additional security for loan.

(2) Section 43 relating to the assignment of charges shall apply *mutatis mutandis* to the assignment of bonds.

45. (1) Where a member of a co-operative credit union has not transacted any business, requested or acknowledged any statement or issued any instructions with respect to that member’s deposit account for a period

Dormant accounts.

of five years, the Board shall serve notice on that member —

- (a) that the member's deposit account may be declared dormant; and
- (b) that a maintenance fee may be imposed.

(2) The five year period referred to under subsection (1) shall be calculated —

- (a) in the case of a deposit made for a fixed period, from the day on which the fixed period terminated;
- (b) in the case of any other deposit, from the date on which the last transaction occurred or a statement of account was requested or acknowledged by the member or instructions issued by the member, whichever is the later.

(3) A notice under subsection (1), shall —

- (a) be served on the member at his last known address; and
- (b) allow a period of ninety days for a response from the member.

(4) The Board shall, on the expiry of the period of notice —

- (a) presume the account to be abandoned;
- (b) declare the account dormant; and
- (c) impose the maintenance fee.

(5) Where a deposit account is declared dormant pursuant to subsection (4), the Board shall transfer the account, interests and other sums due or standing to the member's account to the co-operative credit union's statutory reserve fund.

(6) After the period of five years in the special reserve fund, the Board may transfer the dormant deposit account referred to under subsection (5) to the Central Bank and the Central Bank shall maintain a separate accounting record of all such accounts.

(7) A person whose account has been declared dormant under subsection (4) shall, from the date of the transfer, reclaim any funds transferred from that account to the co-operative credit union's statutory reserve fund or to the Central Bank.

(8) A co-operative credit union shall maintain a register of dormant accounts which shall contain the following —

- (a) the full name of the member;
- (b) the last known address of the member;
- (c) the last known telephone number or other contact of the member;
- (d) the account number;
- (e) the type of account;
- (f) the balance of funds on the account;
- (g) the date of last activity on the account;
- (h) a brief description of measures taken to contact the member;
- (i) such other information as the Central Bank may require.

PART VII DIRECTORS AND OFFICERS

46. (1) This section shall not apply to a co-operative credit union that is continued pursuant to this Act.

Provisional
Directors.

(2) On registration of a co-operative credit union, the individuals whose names appear in the application for registration as having been appointed and having consented to act as provisional directors shall —

- (a) be deemed to have all the powers and duties of directors; and
- (b) hold office until the first general meeting, which shall be held within thirty days after the receipt of the certificate of registration.

(3) The provisional directors shall, at the first general meeting —

- (a) appoint officers;
- (b) appoint an auditor to hold office until the first annual general meeting of the members;
- (c) pass resolutions establishing policies of the co-operative credit union;
- (d) adopt forms of corporate records;
- (e) authorise the issue of securities;
- (f) appoint authorised signing officers and make banking or other financial arrangements; and
- (g) transact any business as required.

Board of
Directors.

47. (1) A co-operative credit union shall be directed by an elected Board which shall be constituted in accordance with this Act, and the bye-laws.

(2) The Board, in addition to the duties prescribed in the bye-laws, shall —

- (a) be responsible for the oversight of the business affairs of the co-operative credit union;
- (b) approve such policies as are required for all major activities of the co-operative credit union, in particular, the lending, investment, liquidity and asset liability management, accounting policies and audit and internal control systems;
- (c) subject to section 61, have charge of the investment of funds;
- (d) approve an annual operating budget for each calendar year;
- (e) cause true accounts to be kept of —
 - (i) the assets and liabilities of the co-operative credit union;
 - (ii) all the sums of money received and expensed; and
 - (iii) other transactions affecting the financial position of the co-operative credit union;
- (f) perform any other duty that is necessary to carry out the purposes of the co-operative credit union in accordance with this Act;
- (g) give the Central Bank full access to all books, papers, records and other sources of information under its control within such time as may be specified by the Central Bank; and
- (h) within seven days of any changes in the membership of the Board, the supervisory committee or the credit committee of the co-operative credit union, notify the Central Bank, in writing, of such changes.

(3) All directors shall be citizens or residents of The Bahamas.

Establishment
and appointment
of committees.

48. (1) The Board shall establish, from time to time —

- (a) a supervisory committee;
- (b) a credit committee.

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- (2) The members of a co-operative credit union shall, annually elect members to fill any vacancies on the supervisory committee.
- (3) The Board may —
- (a) annually appoint all of the members of the credit committee; or
 - (b) where the bye-laws provide that the credit committee is to be elected annually by the membership of the co-operative credit union, appoint a director to the credit committee.
- (4) The Board —
- (a) may appoint such committees, other than those referred to under subsection (1) —
 - (i) composed of members of the Board and or members of the co-operative credit unions who are qualified or experienced in matters relating to accounts, finance, business administration, commerce or law, for the proper carrying out of the functions of the Board, as it considers necessary; and
 - (ii) composed of no less than three members, for the more efficient management of the co-operative credit union;
 - (b) may, by resolution, delegate to any committee any power or duty that it considers necessary for the efficient conduct of its affairs and business of the co-operative credit union except the duty to —
 - (i) fill a vacancy among the directors;
 - (ii) declare a bonus, dividend or patronage rebate;
 - (iii) approve any financial statements of the co-operative credit union;
 - (iv) submit to the members any questions or matter requiring the approval of members;
 - (v) make decisions where this Act or the bye-laws require a two- thirds majority or unanimous vote of the Board.
- (5) Every committee shall —
- (a) fix its quorum at a majority of its members;
 - (b) keep minutes of its proceedings;

- (c) submit to the Board at each meeting of the Board, the minutes of the committee's proceedings.

Election of
Directors, etc.

49. (1) The election of the directors of a co-operative credit union shall be held annually at the annual general meeting.

(2) Every member has the right to vote for the number of directors to be elected in a manner prescribed in the bye-laws.

(3) Where annual elections are held pursuant to subsection (1), a co-operative credit union shall follow the procedural requirements in connection with the conduct of those elections under this Act, the regulations and the bye-laws.

(4) Except where the bye-laws provide otherwise, where the office of a director becomes vacant, the remaining directors by a majority vote shall fill the vacancy.

(5) A director elected by the Board to fill a vacancy shall hold office until the next annual general meeting, at which the position shall be filled for the remainder of the unexpired term by vote of the members.

Disqualifications
of Directors.

50. A person is not eligible to be a director, if he —

- (a) is less than eighteen years of age;
- (b) is not a member of the co-operative credit union or a duly appointed representative of a member of the co-operative credit union;
- (c) has been found by a court to be of unsound mind or is certified to be suffering from a mental disorder within the meaning of the Mental Health Act;
- (d) is an employee of the co-operative credit union, the Apex Body or the Central Bank;
- (e) has been convicted of an offence that is punishable on indictment in The Bahamas, or in another country or an offence involving dishonesty;
- (f) is a professional advisor who provides services to the co-operative credit union in his professional capacity or has provided such services in twelve months preceding the date on which he may be elected;

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- (g) is a member of the supervisory committee;
 - (h) is ninety days or more in arrears of his debt obligation to the co-operative credit union;
 - (i) is an undischarged bankrupt;
 - (j) has been suspended, removed or prohibited from acting as a director of a —
 - (i) financial institution by a domestic regulatory authority; or
 - (ii) foreign financial institution by a foreign regulatory authority.
 - (k) does not meet the requirements prescribed in the bye-laws.

51. (1) Subject to the bye-laws, the directors may meet at any place and on any notice that they consider appropriate. Meetings of directors.

(2) The chairman —

- (a) may call a meeting of directors at any time;
- (b) on the written request of two directors, shall call a meeting, within fourteen days of receipt of that request;
- (c) on the request of the Central Bank shall call a meeting, within fourteen days of receipt of that request.

(3) A majority of the directors constitute a quorum at any meeting of directors.

(4) A director may in any manner waive a notice of meeting of directors.

(5) For the purpose of subsection (4), attendance of a director at a meeting of directors is not deemed to be a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.

(6) Subject to the bye-laws, where all the directors consent, a meeting of directors or a committee of directors may be held by means of —

- (a) a telephone system; or
- (b) a communication facility other than telephone, that permits all persons participating in the meeting to hear and speak to each other, and a person so participating is deemed to be present at that meeting.

(7) Unless this Act, the regulations or the bye-laws require a meeting, a resolution of the directors may be passed without a meeting where —

- (a) all directors are notified in writing, and two-thirds of them consent to the resolution in writing; and
- (b) the consent is filed with the minutes of the proceedings of the directors.

Minutes of meetings.

52. (1) The Board shall cause minutes to be kept of —

- (a) all appointments of officers and committee members made by the Board;
- (b) all the names of directors present at each meeting of directors; and
- (c) all resolutions and proceedings.

(2) Every committee shall —

- (a) cause minutes to be kept of their meetings; and
- (b) submit the minutes referred to under paragraph (a) to the Board for review at the Board's meeting next following the committee meeting to which the minutes relate.

Duty of care of director and officer.

53. (1) Every director and officer of a co-operative credit union in exercising his powers and discharging his duties shall —

- (a) act honestly and in good faith with a view to the best interests of the co-operative credit union; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) The directors may, in discharging their duties under this section, rely on reports, advice, and other information provided by the co-operative credit union's employees, lawyers, accountants, consultants, and committees of the Board of which the relevant director is not a member, unless the director has knowledge which would make such reliance unreasonable or in bad faith.

Employment of directors and committee members.

54. The Board and committee members may not be granted employment in a co-operative credit union unless they have abstained from serving on the Board or any committee of the co-operative credit union for at least one year.

55. A co-operative credit union shall purchase and maintain insurance for the benefit of a director, member of a committee, officer or employee against a liability, loss or damage incurred by that person while serving the co-operative credit union in the capacity of director, member of a committee, officer or employee.

Insurance for directors, committee members, etc.

56. A director, committee member or officer, or an associate of a director, committee member or officer, who, in connection with a transaction relating to shares of a co-operative credit union or a debt obligation of a co-operative credit union, makes use of confidential information for the benefit of, or advantage to himself or of an associate that, if generally known, might reasonably be exercised to affect materially the value of the shares or the debt obligation —

Misuse of confidential information.

- (a) is liable to compensate any person for direct loss suffered by the person as a result of the transaction, unless the information was known or reasonably should have been known to the person at the time of the transaction; and
- (b) is accountable to the co-operative credit union for any direct benefit or advantage received or receivable by him or his associate, as the case may be, as a result of the transaction.

57. (1) Subject to the bye-laws, the directors are jointly and severally liable to make good any loss or damage suffered by the co-operative credit union, where the directors vote or consent to a resolution authorising or approving by any other means —

Liability of directors.

- (a) the purchase of shares contrary to section 61 (b) or (c);
- (b) investments contrary to section 61 ;
- (c) the payment of a dividend on shares contrary to section 33;
- (d) a loan or guarantee or the giving of financial assistance contrary to this Act;
- (e) remuneration contrary to section 58;
- (f) any payments in contravention of this Act, the regulations or the bye-laws.

(2) A director who is present at a meeting of directors or of a committee of directors is deemed to have cast an affirmative vote, given consent to a resolution or given approval mentioned in subsection (1), unless —

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- (a) the director's dissent is entered in the minutes of the meeting; or
 - (b) the director's written dissent is —
 - (i) delivered to the secretary of the meeting before its adjournment;
 - (ii) delivered or sent by registered mail to the office of the co-operative credit union one day after the adjournment of the meeting; or
 - (iii) transmitted by electronic means to the secretary of the meeting one day after the adjournment of the meeting.

(3) A director who votes for a resolution referred to under subsection (1) is not entitled to dissent under subsection (2).

(4) A director who was absent from the meeting referred to under subsection (1) is deemed to have cast an affirmative vote, consented to the resolution or given approval unless within fourteen days after becoming aware of the proceedings, the director delivers or sends by registered mail his written dissent to the office of the co-operative credit union.

(5) On the application of a director, the court may declare whether or not, having regard to any of the circumstances which the court considers appropriate —

- (a) the co-operative credit union is insolvent;
- (b) the payment of a bonus or dividend or the lending of money would make a co-operative credit union insolvent.

Remuneration.

58. (1) No director and no member of a committee is entitled to be paid any remuneration in connection with his duties as a director or a committee member of a co-operative credit union or for his attendance at meetings unless the remuneration —

- (a) is fixed in the bye-laws; and
- (b) is ratified annually by the members, by resolution at the annual general meeting.

(2) For the purpose of subsection (1), remuneration includes any honorarium or any payment, in cash or in kind, however designated.

(3) Directors and committee members may be reimbursed for expenses incurred by reason of the

performance of their duties and functions as directors or members of committees.

(4) The directors shall fix the salaries of any employees appointed by them.

59. A director of a co-operative credit union ceases to hold office when — Ceasing to hold office.

- (a) he dies or resigns;
- (b) he is removed;
- (c) he is no longer qualified pursuant to section 50;
- (d) he acts contrary to section 53;
- (e) he has been absent from three consecutive board meetings, without reasonable cause;
- (f) his term of office expires.

60. (1) Subject to the regulations or the bye-laws, the members of a co-operative credit union may call a special general meeting for the purpose of removing any director from office. Removal of directors.

- (2) The Central Bank may remove a director if—
- (a) the director is in contravention of any requirements under this Act, the regulations or the bye-laws;
 - (b) the director is no longer a fit and proper person pursuant to section 50.

(3) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or, where not so filled, may be filled pursuant to section 49(4).

PART VIII INVESTMENTS AND BORROWINGS

61. A co-operative credit union may invest its funds — Investment of funds.

- (a) in any co-operative credit union or bank approved by the Central Bank;
- (b) in any securities issued or guaranteed by the Government;
- (c) in the shares or on the security of any other institution with limited liability approved by the Central Bank;
- (d) in any other manner as determined by the Central Bank.

Borrowing
Limits.

62. A co-operative credit union shall not borrow funds in excess of ten percent of its total assets.

**PART IX
DEPOSITS, STATUTORY REQUIREMENTS**

Deposits.

63. A co-operative credit union may —

- (a) receive deposits from its members; and
- (b) pay any or all of the deposit and any or all of the interest on the deposit to, or to the order of, that member unless, before payment, the money so deposited is claimed by some other person —
 - (i) in any action or proceeding to which the co-operative credit union is a party and in respect of which service of a writ or other process originating such action or proceeding has been made on the co-operative credit union; or
 - (ii) in any other action or proceeding pursuant to which an injunction or order made by the court requiring the co-operative credit union not to make payment of the money or to make payment of it to a person other than the depositor has been served on the co-operative credit union, and in that case the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

Credit facilities.

64. (1) Subject to the bye-laws, a co-operative credit union may receive deposits and loans from persons who are not members of the co-operative credit union for the purpose of meeting any of its obligations or discharging any of its functions under this Act.

(2) A co-operative credit union may by mortgage or in any other manner it deems appropriate guarantee the repayment of any sums received by it pursuant to subsection (1).

Statutory reserve,
liquidity deposit
and stabilisation
funds, and
disposal thereof.

65. (1) Where a co-operative credit union realizes an annual surplus from its transactions, that co-operative credit union shall establish and maintain a statutory reserve fund as may be prescribed by regulations.

(2) Every co-operative credit union shall ensure that —

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- (a) not less than ten percent of its members' deposits are kept in a liquidity deposit fund;
 - (b) its statutory reserves, retained earnings, qualifying shares and equity shares are at no stage, less than ten percent of its total assets.
 - (c) if the amount in paragraph (b) is below ten percent, the co-operative credit union may cease lending and notify the Central Bank.
- (3) Every co-operative credit union shall contribute annually to a stabilisation fund, in such amount as may be determined by the Apex Body.
- (4) Every co-operative credit union shall ensure that the proceeds of the statutory reserves, liquidity deposit and stabilisation funds are deposited with and administered by the Apex Body in such a manner as may be prescribed by the regulations and the bye-laws.
- (5) Where an Apex Body has not been established or is not functioning, the liquidity deposit, statutory reserves and stabilisation funds shall be administered by a person or body of persons as determined by the Central Bank, after consultation with the respective co-operative credit unions.

PART X LOANS

66. (1) A co-operative credit union may make advances by way of loans to its members.

Loans by co-operative credit unions.

(2) Except for a loan to another co-operative credit union, no loan may be made to a person who is not a member of that co-operative credit union.

(3) A loan to a director, officer, committee member, employee, or an associate of the director, officer, committee member or employee, and a limited company or partnership of which they are a principal stakeholder shall be approved by the Board in such manner as may be prescribed by regulations.

(4) The Board shall record its decision to approve a loan in the minutes of the meeting at which the decision is made.

(5) No loan may be made to a director, officer, committee member, employee or an associate of the director, officer, committee member or employee, nor a

limited company or partnership of which they are a principal stakeholder except to the extent determined in accordance with the credit policy applicable to the co-operative credit union.

(6) A loan made in contravention of subsection (5) is void and shall be immediately repaid to the co-operative credit union.

Provisions for
doubtful loans.

67. Every co-operative credit union shall make such allowance for doubtful loans as may be prescribed by regulations.

Loan approval.

68. (1) Subject to this Act, every loan shall be approved in accordance with the policies established by the directors of the co-operative credit union before any funds are advanced.

(2) A loan to a director, a credit committee member, a supervisory committee member, or any other committee member or an employee of a co-operative credit union or any person associated with any of them shall be approved by the Board in such manner as may be prescribed by regulations.

(3) Any person who knowingly approves or grants a loan in contravention of this Act or the regulations shall be held liable for any losses to the co-operative credit union in relation to that loan.

Security for
loans.

69. Subject to any restrictions that may be prescribed in the bye-laws, a co-operative credit union may take any security for loans that it considers advisable in accordance with sound business practices.

Loan limits.

70. (1) Loans may be made only to members.

(2) The bye-laws shall provide for limits on the amounts of loans to any one member or on any type of loans which may be granted.

Reporting loans.

71. Where a co-operative credit union is reporting loans on the balance sheet in its annual financial statements, the co-operative credit union shall report the loans at their net estimated value after deducting an allowance for doubtful loans.

Interest on loans.

72. (1) The maximum intervals at which interest on loans shall be paid may be prescribed by regulations.

(2) Where the borrower has not paid the interest on his loan for such period as may be prescribed by

regulations, the co-operative credit union shall not include that interest as income.

PART XI CREDIT COMMITTEE

73. (1) Every co-operative credit union shall have a credit committee which shall — Credit committee.

- (a) consist of no less than three members and no more than five members;
- (b) be determined in accordance with the procedure specified in section 48(3).

(2) The bye-laws of the co-operative credit union may provide for election and retirement of members of the credit committee in rotation.

(3) The credit committee shall comprise persons having had experience of or shown capacity in, matters related to accounting, finance or lending.

(4) No person who is a member of the supervisory committee or who is an employee of the co-operative credit union shall be a member of the credit committee.

(5) No member shall be a member of the credit committee unless he has attained the age of eighteen years.

(6) A majority of members of the credit committee constitute a quorum.

(7) At an election of members of the credit committee, a member entitled to vote may cast a single vote in respect of each candidate, but no candidate shall receive more than one vote from each member.

(8) A vacancy occurring in the credit committee may be filled, until the next annual general meeting of the co-operative credit union —

- (a) by the Board, if the vacancy relates to an appointment made by the Board pursuant to section 48(3); or
- (b) by the remaining members of the credit committee, if the vacancy relates to a position held by an elected member of the committee pursuant to section 48(3)(b).

74. The credit committee shall perform such duties under this Act and as may be prescribed by the bye-laws. Duties of credit committee.

Ceasing to be a member of the credit committee.

75. Where a member of the credit committee fails to attend three consecutive meetings without, in the opinion of the Board, reasonable cause, or fails to perform any of the duties allotted to him as a member of the committee, that member's position on the committee may be declared vacant by the Board who may then appoint a qualified person to fill the vacancy until the next annual general meeting of the co-operative credit union.

Removal by members.

76. (1) The members of a co-operative credit union may, by resolution passed by two-thirds of the votes cast at a special general meeting called for that purpose, remove a member of the credit committee before the expiration of his term of office, and shall at that meeting elect another member in place of the first mentioned member for the unexpired portion of his term.

(2) The notice calling the meeting of members referred to under subsection (1) shall specifically state that the purpose of the meeting is to review the composition of the credit committee.

(3) Where a meeting has been called pursuant to subsection (1) for the removal of a member of the credit committee, the member is entitled, at that meeting, to make such representation to the members regarding the resolution for his removal as he thinks fit, and may be represented by a counsel and attorney or an agent.

Officer to approve loan.

77. (1) The Board may, upon such terms and conditions as it specifies, authorise the manager or other employee of the co-operative credit union to approve loans to members within an approved limit as prescribed in the bye-laws.

(2) A person authorised by the Board to approve loans under subsection (1) shall submit a written monthly report to the credit committee stating the number of loan applications received, the number of loans granted and the security, if any, obtained for such loans.

Credit committee reports.

- 78.** The credit committee shall —
- (a) meet at least once every month;
 - (b) keep minutes of its meetings;
 - (c) submit a report to the Board stating —
 - (i) the number of loan applications received;
 - (ii) the number and category of loans granted;
 - (iii) the security obtained for such loans;

- (iv) the number of applications denied; and
- (v) the number of delinquent loans; and
- (d) submit an annual report on the matters referred to in paragraph (c) to the annual general meeting of the co-operative credit union.

PART XII SUPERVISORY COMMITTEE

79. (1) Every co-operative credit union shall have a supervisory committee which shall be elected by the members at the annual general meeting. Supervisory committee.

(2) The supervisory committee shall consist of the number fixed in the bye-laws, which shall not be less than three members.

(3) No person who is a member of the Board or credit committee or who is an employee of the co-operative credit union shall be a member of the supervisory committee.

(4) No member shall be a member of the supervisory committee unless he has attained the age of eighteen years.

(5) A majority of members of the supervisory committee constitutes a quorum.

(6) Where a vacancy occurs in the supervisory committee, the supervisory committee members may fill that vacancy until the next annual meeting of the co-operative credit union.

(7) The Board may appoint such persons as it considers necessary to assist the supervisory committee in its duties, and may pay those persons such remuneration as it thinks fit.

80. (1) The supervisory committee shall —

- (a) examine the books of the co-operative credit union;
- (b) confirm the cash instruments, property and securities of the co-operative credit union;
- (c) confirm the deposits of the members; and
- (d) perform such other duties under this Act and in the bye-laws.

Duties of the
supervisory
committee.

(2) The supervisory committee shall —

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- (a) meet at least every two months, and where no auditor has been appointed pursuant to section 86, shall meet monthly and shall at each such meeting examine the affairs of the co-operative credit union;
 - (b) meet with the Board quarterly.
 - (3) The supervisory committee shall keep minutes of its meetings and shall —
 - (a) lodge the minutes of such meetings with the secretary of the cooperative credit union;
 - (b) within seven days of each meeting, report the results thereof in writing to the Board; and
 - (c) submit a written report to the annual general meeting of the members of the co-operative credit union.

Compliance officer.

81. (1) The Board shall assign the role of compliance officer to a senior qualified person other than a director, member of the supervisory committee or auditor of the co-operative credit union.

(2) The Board shall ensure that the compliance officer referred to under subsection (1) —

- (a) has clearly documented reporting lines to the Board;
- (b) is subject to internal audit oversight,

(3) The compliance officer shall be responsible for managing compliance at all levels in a co-operative credit union, including compliance with all statutory and regulatory requirements.

Internal Audit Function.

82. (1) Every co-operative credit union shall establish an internal audit function.

(2) The internal audit function shall be carried out by an internal auditor.

- (3) The Board may appoint —
 - (a) a senior officer of the co-operative credit union; or
 - (b) a chartered accountant,

to carry out the internal audit function pursuant to subsection (2).

(4) The internal audit function shall be performed independently of other departments in the co-operative

credit union and the internal auditor shall report to the supervisory committee on —

- (a) the adequacy of the internal controls of the co-operative credit union;
- (b) compliance with the internal control procedures of the co-operative credit union;
- (c) instances of non-compliance with the co-operative credit union's system of internal controls;
- (d) any material weaknesses in the co-operative credit union's system of internal controls;
- (e) recommended procedures to eliminate any material weaknesses in the co-operative credit union's system of internal controls; and
- (f) such other matters as the Board determines.

83. (1) Where the supervisory committee has reasonable cause to believe that the funds, securities or other property of the co-operative credit union have been misappropriated or misdirected, or in the event that this Act, the regulations or the bye-laws have been contravened by the Board, the credit committee or a member thereof or an officer or employee engaged by the Board, the supervisory committee shall immediately inform the Board and the Central Bank in writing.

Misappropriation, etc.

(2) The supervisory committee shall immediately request the Board to appoint an auditor or some other body to assist it in determining whether any of the funds, securities or other property of the co-operative credit union have been misappropriated or misdirected and the remuneration of any auditor or other body so appointed shall be determined by the supervisory committee and paid by the co-operative credit union,

(3) In any case where the Board fails to appoint an auditor within fourteen days after a request is made pursuant to subsection (2), the supervisory committee shall appoint an auditor within seven days after the expiry period of fourteen days.

(4) In the event of a misappropriation or misdirection or a suspected misappropriation or suspected misdirection as referred to in subsection (1), the supervisory committee may recommend the suspension of any member of the Board to the Central Bank and the Central Bank may suspend any member of the Board, by

notice in writing, where the Central Bank is of the opinion that there are reasonable grounds for such suspension.

(5) The supervisory committee shall immediately request the Board to summon a special general meeting of the members to be held within fourteen days after the suspension referred to in subsection (4); and where the Board fails to summon such a meeting, the supervisory committee shall summon the meeting within seven days after the expiry of the period of fourteen days.

(6) The supervisory committee shall report to the general meeting all the circumstances of any misappropriation or misdirection of funds, securities or other property and the reasons for any suspension.

(7) The members of the co-operative credit union may, by resolution, dismiss from office any person suspended under subsection (4), and, where the members of the co-operative credit union do not dismiss from office any person so suspended, that person shall be immediately reinstated,

(8) Where a meeting has been called pursuant to subsection (5), for the dismissal of a person suspended pursuant to subsection (4), the member shall be entitled at the meeting called for his dismissal, to make such representations to the members regarding the resolution for his dismissal as he thinks fit, and may be represented by a counsel and attorney or an agent.

Ceasing to be a member of the supervisory committee.

84. Where a member of the supervisory committee fails to attend three consecutive meetings of the committee without reasonable cause, or fails to perform any of the duties allotted to him as a member of the committee, that member's position on the committee may be declared vacant by the remaining members of the committee who may appoint a qualified person to fill the vacancy until the next annual general meeting of the co-operative credit union.

Removal by members.

85. (1) The members of a co-operative credit union may, by resolution passed by two-thirds of the votes cast at a special general meeting duly called for that purpose, remove a member of the supervisory committee before the expiration of his term of office, and shall by vote cast at the meeting elect another member in his stead for the unexpired portion of his term.

(2) The notice calling the meeting of members referred to under subsection (1) shall state that the purpose of the meeting is to review the composition of the supervisory committee.

(3) Where a meeting has been called pursuant to subsection (1) for the removal of a member of the supervisory committee, the member of the supervisory committee is entitled to make such representation to the members regarding the resolution for his removal as he thinks fit, and may be represented by a counsel and attorney or an agent.

PART XIII AUDIT, INQUIRY AND INSPECTION

86. (1) The Board shall at its own expense, cause the accounts of the co-operative credit union to be audited at the end of each financial year by an auditor appointed by the Board; and within fourteen days of the appointment of the auditor, notify the Central Bank of the appointment. Audit.

(2) Upon the expiration of the period of three months after the end of the financial year, if the Board has failed to effect an audit, the Central Bank shall cause an audit to be carried out by an auditor appointed by the Central Bank and the expenses of an auditor so appointed shall be paid out of the funds of the co-operative credit union.

(3) An auditor appointed under subsection (1) or (2) shall be a member of The Bahamas Institute of Chartered Accountants in good standing.

(4) The Board shall not cause the accounts of a co-operative credit union to be audited by the same auditor for a period exceeding six consecutive financial years, and shall ensure that a period of three years has elapsed before the re-appointment of the auditor.

(5) The auditor appointed under subsection (1), shall submit a report to the Board.

(6) The contents of the auditor's report shall be prepared in accordance with international accounting standards and the auditor shall state whether in his opinion —

(a) the annual financial statement referred to in the report presents fairly the financial position of the

co-operative credit union, and the results of its operations for the period under review; and

- (b) the co-operative credit union is compliant with the requirements under this Act, the regulations and the bye-laws.

(7) A co-operative credit union shall within four months of the end of its financial year submit an annual audited statement of the co-operative credit union's accounts to the Central Bank together with a copy of the auditor's report.

(8) An auditor of a co-operative credit union shall have access at all reasonable times to the books, accounts vouchers, and documents of the co-operative credit union or any book or document relating to any cash or securities belonging to the credit union and affiliated companies.

(9) An auditor of a co-operative credit union shall immediately notify in writing —

- (a) the Central Bank, addressed to the Inspector;
(b) the co-operative credit union,

of his intention or decision to —

- (i) resign before the expiration of his term of office as auditor or not to seek to be re-appointed as auditor; or
(ii) include a modification of his report on the co-operative credit union's financial statements.

(10) The resignation of an auditor shall take effect on such date as may be specified in the notice referred to in subsection (9) and approved by the Central Bank.

(11) The auditor appointed under subsection (2), shall complete the audit of the financial statements of the co-operative credit union within three months after being appointed by the Central Bank, and shall submit a written report to the Central Bank of its findings and the Central Bank shall immediately send a copy of the report to the Board.

(12) Upon receipt of an audit report and comments and suggestions thereon the Board shall cause the same to be brought to the attention of the members of the co-operative credit union in an appropriate manner within six months after the end of the financial year.

87. (1) A co-operative credit union shall, in accordance with section 86(7), submit within four months of the end of its financial year an annual audited statement of accounts to the Central Bank, together with a copy of the auditor's report.

Submission of returns.

(2) No later than twenty days after the end of the preceding month, a cooperative credit union shall submit to the Central Bank a monthly return in such form as the Central Bank may determine.

(3) The Central Bank may, by notice in writing, require a co-operative credit union, director or officer of a co-operative credit union to make a special return on any subject connected with the business and affairs of the cooperative credit union and, where the Central Bank requires a special return, the Central Bank shall specify in the notice a time within which the special return shall be made.

(4) A co-operative credit union, a director or an officer of a co-operative credit union that contravenes this section is liable to pay to the Central Bank a special filing fee of five hundred dollars.

(5) The Central Bank may —

- (a) extend the time for the submission of the annual audited financial statements referred to in subsection (1) for a further period not exceeding sixty days;
- (b) exempt any co-operative credit union from the provisions of subsection (1) and section 86(7) subject to such terms and conditions as the Central Bank may determine.

88. (1) The Central Bank may cause the Inspector, in the exercise of his function of supervision, to hold an investigation into the constitution, operations and financial position of a co-operative credit union —

Duties and powers of Inspector.

- (a) on the motion of the Central Bank;
- (b) on the application of a creditor of a co-operative credit union;
- (c) on the application of a majority of members of the Board or one third of the members of a co-operative credit union present and voting; or
- (d) on the recommendation of the Apex Body.

(2) For the purposes of this Act, the duties of the Inspector are —

- (a) to examine and make recommendations to the Governor with respect to applications for registration;
- (b) whenever the Inspector considers necessary, and when required by the Governor, to conduct on-site examinations and off-site supervision of the business affairs of each co-operative credit union for the purpose of satisfying himself that —
 - (i) the provisions of this Act, the Anti-Terrorism Act, the Financial Transactions Reporting Act or any other relevant Act are being complied with,
 - (ii) the co-operative credit union is in a sound financial position;
- (c) after the conclusion of each examination or supervision referred to in paragraph (b), to report to the Governor;
- (d) to examine and report on the returns submitted to the Central Bank pursuant to sections 86(7) and 87(1) and (2);
- (e) to examine, by way of receipt of regular returns, reports or in such other manner as the Inspector considers necessary, the affairs or business of any co-operative credit union carrying on business within The Bahamas.

Ch. 107.
Ch. 368.

(3) In the performance of his duties under this Act and subject to the confidentiality requirements as may be provided for in the Central Bank of The Bahamas Act, the Inspector may at all reasonable times —

- (a) have access to the books, accounts vouchers, and documents of the co-operative credit union or any document relating to any cash or securities belonging to the credit union and affiliated companies including documents stored in electronic form;
- (b) call upon any director, manager or any officer designated by the Board for such information or explanation;
- (c) call upon the current or any former auditor of a co-operative credit union for the auditor's reports, working papers, information or explanation.

Ch. 351.

(4) No duty of confidentiality to which an auditor or former auditor of a cooperative credit union may be subject shall be regarded as having been breached by reason of his communicating in good faith to the Inspector, any information which is relevant to the duties of the Inspector under this Act.

(5) The Central Bank may, in writing, designate any person to assist the Inspector in the performance of his duties under this Act.

(6) A person who —

- (a) wilfully delays or obstructs the Inspector in the exercise of his duties under this Act;
- (b) refuses or neglects to answer a question or to furnish any information or to produce any document referred to under subsection (3) when required to do so by an Inspector;
- (c) knowingly or intentionally supplies false or misleading information to the Inspector or any person designated to assist the Inspector;
- (d) conceals or attempts to conceal any person or attempts to prevent any person from being questioned by an Inspector,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to a term of imprisonment not exceeding one year or to both such fine and imprisonment and in the case of a continuing offence to a further fine not exceeding one hundred dollars for each day during which the offence continues.

(7) Where an on-site examination or off-site supervision of the business affairs of a co-operative credit union reveals that the co-operative credit union is conducting its business in an unlawful or unsound manner or is otherwise in an unsound condition, the Inspector shall inform the Central Bank and the Central Bank may direct the co-operative credit union —

- (a) to engage an independent auditor to —
 - (i) conduct a review of its financial statements and accounting records;
 - (ii) submit a copy of the review showing the true financial condition of the co-operative credit union to the Central Bank and the co-operative credit union; and

(b) to take all such other measures as the Central Bank may consider necessary.

(8) No action, suit, prosecution or other proceedings shall be brought or instituted personally against the Inspector or any person duly authorised to assist the Inspector in respect of any act done *bona fide* in pursuance or execution or intended execution of his duties under this Act.

Power of search.

89. (1) Where a Magistrate is satisfied by information on oath or by affirmation given by the Inspector or by a person designated under section 88(5) to assist the Inspector, that there is reasonable grounds for suspecting —

(a) that an offence under this Act has been or is being committed and that evidence of the commission of the offence may be found at any premises specified in the information;

(b) that any books, vouchers, accounts or documents relating to cash or securities which ought to have been produced under section 88(3) and have not been produced may be found at any such premises,

the Magistrate may issue a search warrant authorising the Inspector or such person designated under section 88(5) or a police officer and any other person named in the warrant to enter and search the premises specified in the information on one occasion at any time within one month after the date of issue of the warrant.

(2) Every search warrant shall be subject to such conditions as the Magistrate may specify in the warrant.

(3) The Inspector or person designated under section 88(5), or a police officer and any other person named in the warrant shall be furnished with a form of identification, and shall produce such identification and the warrant for inspection upon initial entry on any premises and in response to any later reasonable request.

(4) The warrant referred to under subsection (1), may authorise the Inspector or such person designated under section 88(5), or a police officer and any other person named in the warrant —

(a) to use such assistance as may be reasonable in the circumstances;

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- (b) to use such force as is reasonable in the circumstances for the purpose of entering the premises; and
 - (c) search for and seize anything referred to in the warrant or which he believes on reasonable grounds to be evidence in respect of the offence against this Act.

(5) A person who obstructs the Inspector or any other person in the exercise of any powers conferred on him by virtue of this section commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(6) For the purposes of this section, “premises” includes any building, vehicles, vessel, aircraft or place.

90. A co-operative credit union shall immediately notify the Central Bank, where that co-operative credit union —

Notice of
Insolvency.

- (a) is or is likely to become insolvent;
- (b) is or is likely to become unable to meet its obligations; or
- (c) has suspended or is about to suspend payments.

91. (1) Where the Central Bank is of the opinion after an on-site examination or off-site supervision, that the Board is not performing its duties properly, it may, after objections, if any, made by the Board or other affected person and after considering such objections, at a general meeting of the cooperative credit union summoned by the Central Bank, by order in writing —

Dissolution of
Board.

- (a) cause a new Board to be elected;
- (b) direct that the affairs of the co-operative credit union shall be managed and administered by a suitable individual or organisation; or
- (c) dissolve the Board.

(2) Subject to subsection (3), every direction under subsection (1)(b) shall have effect for such period not exceeding one year as may be specified in the order containing such direction.

(3) The Central Bank may in its discretion from time to time amend the order for the purpose of extending the period during which the direction shall have effect.

(4) Where any order is made under subsection (1), the Central Bank shall by the same or subsequent order appoint a fit and proper person or two or more such individuals or organisations to manage and administer the affairs of the co-operative credit union, and may from time to time remove or replace any such appointee.

(5) Subject to the general direction and control of the Central Bank, any appointee under this section to manage the affairs of a co-operative credit union —

- (a) shall have the power to recover the assets and discharge the liabilities of the co-operative credit union and take such other steps as may be necessary in its interest; and
- (b) may exercise all the powers, rights and privileges of a duly constituted committee of the co-operative credit union.

(6) Appointees under this section to manage the affairs of a co-operative credit union shall be jointly and severally responsible for any loss sustained through any such acts committed by them as are contrary to any enactment or the bye-laws.

(7) The Central Bank may fix the remuneration payable to any appointee under this section to manage the affairs of a co-operative credit union, and the amount of such remuneration and other expenses, if any, incurred in the management of the co-operative credit union shall be payable from the funds of the co-operative credit union.

(8) The appointee under this section shall arrange for the election of a new Board in accordance with the bye-laws prior to the date upon which his appointment shall expire.

(9) No order under subsection (1) shall be made by the Central Bank in respect of any co-operative credit union, if the co-operative credit union is indebted to any bank, financial institution, or creditor except after prior consultation with these institutions in regard to the dissolution of the Board and to the persons by whom and the manner in which the affairs of the co-operative credit union are to be managed and administered.

(10) Nothing in this section shall be deemed to affect the power of the Central Bank to cancel or suspend the registration of a co-operative credit union under section 14.

PART XIV
DISPUTES AND APPEALS

92. (1) There shall be a Registered Co-operative Credit Unions Appeal Tribunal (“Tribunal”) which shall consist of three persons appointed by the Minister of whom —

Registered Co-operative Credit Unions Appeal Tribunal.

- (a) one shall be a counsel and attorney of at least ten years standing;
- (b) one shall be a person recommended by the Central Bank; and
- (c) one shall be a person recommended by the Apex Body.

(2) The persons who shall constitute the Tribunal shall be appointed for a period not exceeding three years.

(3) The decision of the Tribunal on a question of fact shall be final and may not be called into question in any court and shall be enforced in the same manner as if the decision had been a judgment of a civil court; but a decision of the Tribunal on a question of law may be appealed to the Supreme Court.

(4) The Minister may by Order prescribe the procedure of the Tribunal.

(5) The members of the Tribunal shall receive such remuneration as the Minister determines, being at least five hundred dollars per case.

93. (1) Where any dispute that relates to the business of a co-operative credit union arises —

Settlement of disputes.

- (a) among members, past members and persons claiming through members, past members and deceased members;
- (b) between a member, past member, or a person claiming through a member, and the co-operative credit union, its Board or any officer of the co-operative credit union;
- (c) between the co-operative credit union and any other co-operative credit union;
- (d) between the co-operative credit union or its Board and any officer or employee of the co-operative credit union,

the dispute shall be referred to the Central Bank for a decision.

(2) The Central Bank may before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation with the object of ascertaining the causes, defining the issues and endeavouring to bring about a voluntary settlement between the parties to the dispute.

(3) Where a dispute is referred to the Central Bank under subsection (1), the Central Bank may —

- (a) decide the dispute; or
- (b) refer the dispute to an arbitrator or arbitrators appointed by the Central Bank.

(4) For the purpose of hearing any dispute, the Central Bank or arbitrator, as the case may be, may administer oaths and may require the attendance of all parties concerned and witnesses, and the production of all books, documents and things relating to the dispute.

(5) The Central Bank or the arbitrator, as the case may be, shall also have the power to order the expenses of determining any dispute including fees to legal practitioners to be paid either out of the funds of the co-operative credit union or by such parties as the Central Bank determines.

(6) A party aggrieved by an order or a decision of the Central Bank or an arbitrator may appeal to the Tribunal within sixty days of such order or decision.

(7) Where there is no appeal under subsection (6), the decision of the Central Bank and an award of an arbitrator —

- (a) may be filed in the Supreme Court or in the Magistrate's Court for the district where the co-operative credit union is located and shall be registered in the court in which it is filed;
- (b) after the expiration of fourteen days after it is filed and registered, shall be deemed to have the same force and effect as a judgment of the court in which it is registered and shall be enforced accordingly by the person who filed the decision or award.

(8) For the purpose of this section, the chairman or other officer of the Apex Body may serve as an arbitrator.

(9) Notwithstanding anything in this section, a co-operative credit union may exercise any rights arising under any charges, mortgages, bills of sale or other

securities duly executed in accordance with this Act or any other law without recourse to the Central Bank or to arbitration.

(10) For the purposes of subsection (1) a claim by a co-operative credit union for a debt or demand due to it from a member, former member or a personal representative of a deceased member is a dispute that relates to the business of a co-operative credit union within the meaning of subsection (1).

94. (1) Notwithstanding anything contained in sections 92 and 93, the Central Bank or an arbitrator may in the course of making a determination in a dispute refer a question of law arising therefrom to the Supreme Court, by way of case stated for the opinion of that court.

Case stated on question of law.

(2) A Judge of the Supreme Court may consider and determine any question of law so referred pursuant to section (1).

PART XV RESTRUCTURING OF CO-OPERATIVE CREDIT UNIONS

95. The restructuring of a co-operative credit union may be effected by any of the following methods —

Methods of restructuring.

- (a) by the amalgamation with another co-operative credit union to form a single co-operative credit union; or
- (b) by the transfer of the assets and liabilities of one co-operative credit union to another co-operative credit union.

96. (1) Any two or more co-operative credit unions may, with the approval of the Central Bank by a resolution passed by not less than three-fourths of all the members of each co-operative credit union present and voting at a special meeting called for that purpose, amalgamate as one co-operative credit union.

Amalgamation of co-operative credit unions.

(2) Where the resolution referred to in subsection (1) is passed, each cooperative credit union shall apply to the Central Bank for cancellation of its registration and the co-operative credit unions shall jointly make application for the registration of the amalgamated co-operative credit union.

(3) The registration of an amalgamated co-operative credit union shall be deemed to be sufficient to vest the

assets and liabilities of the amalgamating co-operative credit unions in the amalgamated co-operative credit union.

Transfer of assets of co-operative credit unions.

97. (1) A co-operative credit union may, with the approval of the Central Bank, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for that purpose, agree to transfer its assets and liabilities to any other co-operative credit union which has agreed to accept them.

(2) An acceptance by another co-operative credit union under subsection (1) shall be evidenced by a resolution of not less than three-fourths of the members of that other co-operative credit union present and voting at a special general meeting called for that purpose.

(3) On the passing of a resolution referred to in subsections (1) and (2), the transferring co-operative credit union shall apply to the Central Bank for cancellation of its registration and the transferee co-operative credit union shall submit to the Central Bank a copy of its resolution agreeing to the transfer.

(4) A cancellation of registration and a submission of a resolution agreeing to accept a transfer shall be deemed to be sufficient to vest the assets and liabilities of the transferor in the transferee.

Claims of objecting creditors.

98. Notwithstanding sections 96 and 97, no amalgamation or transfer shall be effected —

- (a) unless the creditors of the co-operative credit unions concerned are given three months written notice of the proposals; and
- (b) where any creditor objects in writing to the proposal, any claims against the co-operative credit unions are first satisfied.

PART XVI

WINDING UP AND ANCILLARY MATTERS

Winding up.

99. (1) Where the Central Bank, after an on-site examination or off-site supervision of the affairs of a co-operative credit union, is satisfied that the co-operative credit union is insolvent or unable to meet the minimum capital adequacy requirement stipulated under this Act and that —

- (a) it is unlikely to meet the demands of the depositors of the cooperative credit union; or

- (b) its continuation in business is likely to involve a loss to the members of the co-operative credit union or to the creditors of the co-operative credit union,

the Central Bank may make an order directing it to be wound up and may appoint a liquidator for that purpose and fix his remuneration, which shall be paid out of the funds of the co-operative credit union.

(2) Where no liquidator has been appointed the assets and liabilities of the co-operative credit union shall vest in the Central Bank for a period not exceeding twelve months.

100. The Central Bank may, by order in writing, having published a notice of its intention to issue the order thirty days before making the order, direct a cooperative credit union to be wound up, if at any time it is proved to the satisfaction of the Central Bank that the membership has been reduced to less than the required number.

Winding up by virtue of reduced membership.

101. (1) Subject to the approval of the Central Bank, the members of a co-operative credit union may, by resolution supported by at least two-thirds of all the members present at a special general meeting called for that purpose, authorise the winding up of that co-operative credit union.

Voluntary winding up.

(2) The Board shall cause a notice of a general meeting of the members to be sent to each member for the purpose of authorising the winding-up.

(3) The members of a co-operative credit union may, at the meeting to be held for the purpose of authorising the winding-up, appoint a liquidator.

(4) Where the Central Bank —

- (a) receives notice, in a form satisfactory to the Central Bank, of an authorisation to wind-up a co-operative credit union;
- (b) is satisfied that it is in the best interest of the co-operative credit union and its members,

the Central Bank may approve the winding-up.

(5) An authorisation approved pursuant to subsection (4) shall specify —

- (a) the assets and liabilities of the co-operative credit union;

- (b) the claim of any creditors;
- (c) the number of members of the co-operative credit union; and
- (d) the nature and extent of the members' interests in the co-operative credit union.

(6) Where a co-operative credit union is wound-up under this section, any surplus assets remaining after all claimants have been paid shall be utilized in the manner specified in section 106.

Power of Central Bank pursuant to a winding up order.

102. (1) Where the Central Bank cancels the registration of a co-operative credit union pursuant to section 14, the assets and liabilities of the co-operative credit union shall immediately vest with the Central Bank and the Central Bank shall have in respect of those assets and liabilities the powers of a liquidator under section 103.

(2) The Central Bank may delegate its power as a liquidator to a suitably qualified person; but any such delegation shall be revocable at will and shall not preclude the Central Bank from exercising the power.

(3) The Central Bank may publish in the *Gazette*, notice of the delegation of its power as liquidator.

Powers of a liquidator.

103. A liquidator appointed under subsection 99(1) shall —

- (a) take immediate possession of all assets belonging to the co-operative credit union and of all books, records and other documents relating to the business of the co-operative credit union so far as may be necessary for its winding-up and raise on the security of the assets of the co-operative credit union the money requisite for this purpose;
- (b) refer disputes to the Central Bank with a recommendation that the dispute be settled by arbitration under section 93 of the Act and institute and defend actions and other legal proceedings on behalf of the co-operative credit union in the name of his office;
- (c) investigate all claims against the co-operative credit union and, subject to the provisions of the Act, decide questions of priority arising out of such claims, and pay rateably according to the amount of such debts, the surplus, if any, being applied in payment of interest from the date of

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- liquidation at a rate to be fixed by the Central Bank and not exceeding five per cent;
- (d) fix the time within which creditors shall have to prove their debts and claims or be included for the benefit of any distribution made before those debts or claims are proved;
 - (e) make any compromise or arrangement with creditors having and alleging to have any claims, present or future, for which the co-operative credit union may be rendered liable;
 - (f) compromise all claims or liabilities to calls and debts and liabilities capable of resulting in debts and all claims, present and future, certain or contingent, subsisting or supposed to subsist between the co-operative credit union and a contributory or alleged contributory or other debtor or person apprehending liability to the co-operative credit union and all questions in any way relating to or affecting the assets or winding up of the co-operative credit union on such terms as may be agreed and take any security for the discharge of any such call, liability, debt or claim and give complete discharge in respect thereof;
 - (g) from time to time, determine the contribution to be made or remaining to be made by the members or past members or by the estates or nominees or legal personal representatives of deceased members or by any officer to the assets of the co-operative credit union, and such contribution shall include debts due from members or persons;
 - (h) determine by what persons and in what proportions the cost of liquidation shall be borne;
 - (i) arrange for the distribution of the assets of the co-operative credit union in a convenient manner when a scheme of distribution has been approved by the Central Bank;
 - (j) call such general meetings of the co-operative credit union as may be necessary;
 - (k) administer oaths, require the attendance of witnesses and other persons concerned with the management of the co-operative credit union and to require such persons to produce books,

documents and other like matters relevant to the co-operative credit union.

Power of Central Bank to control liquidator.

104. A liquidator shall exercise his powers subject to the powers of the Central Bank and the Central Bank may —

- (a) rescind or vary an order made by a liquidator and make whatever new order it deems appropriate;
- (b) remove the liquidator from office;
- (c) call for all books, documents and assets of a co-operative credit union;
- (d) by order in writing limit the powers of the liquidator under section 103;
- (e) require accounts to be rendered to the Central Bank by the liquidator;
- (f) procure the auditing of the accounts of the liquidator and authorise the distribution of the assets of a co-operative credit union;
- (g) make an order for the remuneration of the liquidator; and
- (h) refer any subject of dispute between a liquidator and any third party to arbitration if that party consents in writing to be bound by the decision of the arbitrator.

Cancellation of registration consequent upon winding up.

105. Where the Central Bank makes an order cancelling the registration of a co-operative credit union, the co-operative credit union shall be deemed to be dissolved from the date of such order.

Disposal of surplus assets.

106. After all the liabilities including the paid-up share capital of a cancelled co-operative credit union have been met, any surplus assets shall not be divided amongst its members but shall be devoted to any object contained in the bye-laws and when no object is so contained, to any object of public utility determined by the general meeting of the co-operative credit union and approved by the Central Bank, or such assets, as the members so agree, may be assigned by the Central Bank in whole or in part to either or both of the following —

- (a) an object of public utility of local interest;
- (b) a charitable purpose,

or may be placed on deposit with a bank or other financial institution approved by the Central Bank until such time as

a co-operative credit union with similar objects and by-laws is registered where, with the consent of the Central Bank such surplus assets may be credited to the reserve fund of such new co-operative credit union.

107. (1) Where in the course of on-site examinations or off-site supervision or an audit under section 86, or a liquidation of a co-operative credit union, it appears that any sum of money is due to the co-operative credit union from any person who or which has taken part in the organisation or management of the co-operative credit union, the Central Bank may, of its own motion or upon the application of the Board or liquidator or any creditor or contributor to the co-operative credit union, as the case may be, examine the conduct of such person or group of persons and make an order requiring him or such group to —

Power of Central Bank to surcharge officers etc. of a co-operative credit union.

- (a) repay with such interest as the Central Bank thinks fit such money or part thereof;
- (b) restore such property or part thereof; or
- (c) contribute such sum as the Central Bank thinks fit to the assets of the co-operative credit union by way of compensation.

(2) Before making an order under subsection (1) against any person or group of persons, the Central Bank shall give that person or group of persons an opportunity to be heard and to show cause why such order should not be made.

(3) Where an order under subsection (1) has not been complied with, such sum may be recovered by the co-operative credit union on application to —

- (a) a Magistrate's Court having jurisdiction in the registered place of business of the co-operative credit union, as though it were a fine imposed by sentence of a Magistrate, and in default of payment, the Magistrate, may impose a sentence of imprisonment in respect of such persons or group of persons, for a term not exceeding six months or until due payment is made or whichever is earlier; or
- (b) the Supreme Court in any case where a Magistrate's Court lacks the jurisdiction to hear the application.

(4) Neither the preceding provisions of this section nor the making of any order thereunder may be deemed or

construed to preclude or otherwise affect the institution or maintenance of a prosecution against any person or group of persons referred to under subsection (1) in respect of any offence under any other written law.

Attachment of property.

108. Where the Central Bank is satisfied that any person with the intent to defraud or delay the execution of any decision that may be given in a dispute referred to the Central Bank or to an arbitrator is about to dispose of the whole or any part of his property, the Central Bank may, unless adequate security is furnished, apply to —

- (a) a Magistrate's Court of the district in which the property is situated for an order for the conditional attachment of such property and the Magistrate may, if he considers it to be in the interest of justice, make such an order; or
- (b) the Supreme Court, in any case where a Magistrate's Court lacks the jurisdiction to hear the application.

Enforcement.

109. An order made by a liquidator or the Central Bank under this Part shall be enforced in all respects as an order made by a Magistrate in his civil jurisdiction.

Limitation of jurisdiction of civil court.

110. Except to the extent provided in this Part, no civil court shall have any jurisdiction, in respect of any matter concerned with the winding-up of a co-operative credit union.

PART XVII APEX BODY

Establishment and constitution of Apex Body.

111. For the purpose of this Act, the membership of the Apex Body established under section 115 of the Co-operative Societies Act shall include co-operative credit unions registered under this Act.

Functions of Apex Body.

112. (1) For the purpose of this Act, the Apex Body shall be a co-operative credit union and shall co-ordinate, assist and promote all co-operative credit unions and shall perform such functions as may be determined by its constituent members.

(2) Without prejudice to subsection (1), the Apex Body shall be responsible for the administration and management of its member's stabilization fund, liquidity deposit fund and statutory reserve fund, as established under section 65.

(3) The Apex Body shall —

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- (a) pay market rates of return on money under its administration;
 - (b) invest in cash, government securities, government guaranteed investments or other investments as approved by the Central Bank; and
 - (c) establish an investment committee.
- (4) An investment committee established under subsection (3)(c) shall —
- (a) consist of three persons, one of whom shall be a member of the board of the Apex Body, who shall be appointed by the Apex Body, after consultation with the Central Bank, for a period of three years and shall be eligible for re-appointment, but no member of the investment committee shall serve more than two consecutive terms;
 - (b) consist of persons who have a sound understanding of investment risks and liquidity management.
- (5) The duties of the investment committee are to —
- (a) set investment strategies and policies;
 - (b) review and revise investment strategies on a regular basis in light of the changes in the market environment; and
 - (c) coordinate and oversee the investment portfolio of the Apex Body.

113. (1) A co-operative credit union shall appoint one of its directors to hold office at the first meeting, and subsequent annual meetings of the Apex Body for a period of either one, two or three years in accordance with the bye-laws of the Apex Body.

Management.

- (2) No director of an Apex Body may hold office —
 - (a) for more than two consecutive terms;
 - (b) in any case where such person has ceased to be a director of a co-operative credit union that is a member of the Apex Body.
- (3) The Board of an Apex Body is subject to the requirements under section 47.
- (4) The Apex Body is exempt from establishing a liquidity deposit fund.

Consultation
with the Central
Bank.

114. The Central Bank may, from time to time, consult with the Apex Body, on matters relating to the development of co-operative credit unions.

PART XVIII OFFENCES

Corrupt practices
and bribery.

115. (1) A member, director, committee member, agent or employee of a co-operative credit union who corruptly accepts, agrees to accept, obtains or attempts to obtain whether for himself or another, any gift or consideration as an inducement or reward for doing or forbearing to do any act relating to the business of the co-operative credit union or for showing favour or disfavour to any person in relation to the business of the co-operative credit union and any person who corruptly gives, agrees to give or offers such gift or consideration to any member, director, committee member, agent or employee of a co-operative credit union as such inducement or reward, commits an offence and is liable on summary conviction to a fine of two thousand dollars or to a term of imprisonment for five years.

(2) In this section, “consideration” includes valuable consideration of any kind.

Falsely obtaining
property of co-
operative credit
union.

116. (1) A person who obtains possession of any property of or is granted any loan by a co-operative credit union by false representation or other corrupt means commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(2) In any proceedings under this section the person accused may in addition to any penalty imposed be ordered to deliver up any property or repay any sum of money to which the proceedings relate and pay the cost of the proceedings.

Failure to comply
with the Act, etc.

117. (1) A co-operative credit union or any officer or member thereof or any other person who fails without reasonable cause or wilfully neglects or refuses to comply with any requirements of this Act or any order given for the purposes of and in accordance with this Act or to furnish any information or who purporting to comply with any such requirement knowingly furnishes false information, commits an offence.

(2) A person who wilfully or without reasonable cause disobeys any summons, order or direction lawfully issued under this Act, commits an offence.

(3) An officer or member of a co-operative credit union who wilfully contravenes the bye-laws relating to his duties or functions as such officer or member commits an offence.

(4) A person who commits an offence under this section is liable on summary conviction to a fine of two thousand dollars.

118. (1) A person who fraudulently or clandestinely removes any property comprised in a charge created in favour of a co-operative credit union under section 41 from the place where such property was situated at the time of the execution of the charge or who knowingly disposes of or deals with or attempts to dispose of or deal with such property without first obtaining in writing leave of the co-operative credit union, commits an offence and is liable on summary conviction to a fine of one thousand dollars or to a term of imprisonment for one year.

Dealing in property subject to charge.

(2) Where any person who has received a loan from a co-operative credit union is convicted of an offence under this section, there may be imposed on him notwithstanding any penalty specified in subsection (1), an additional penalty equal to such amount of the loan with interest as has not been repaid to the date of the conviction and the payment of such additional penalty shall discharge the liability of the borrower to repay the loan.

(3) Where the court has imposed an additional penalty specified in subsection (2) and that penalty is not paid, the court may order that the person convicted under this section and who has defaulted in the payment of the additional penalty be imprisoned for six months in respect of such default.

119. (1) A person commits an offence, who makes or assists in making a report, return, notice or other document, required under this Act to be sent to the Central Bank or to any other person, that —

Offences with respect to reports.

- (a) contains an untrue statement of a material fact;
- (b) omits to state a material fact required in the report or necessary to make a statement contained in the report not misleading in light of the circumstances in which it was made.

(2) A person who commits an offence under subsection (1) is liable on summary conviction —

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- (a) in the case of an individual, to a fine of five thousand dollars or to a term of imprisonment of one year or to both;
 - (b) in the case of a body corporate, to a fine of twenty thousand dollars.
- (3) Where the person referred to under subsection (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer of the body corporate who knowingly authorises, permits or acquiesces in the offence also commits an offence and is liable on summary conviction to a fine of five thousand dollars or to a term of imprisonment of one year or to both.
- (4) No person commits an offence under subsection (1) or (3) where the untrue statement or omission —
- (a) was unknown to him; and
 - (b) in the exercise of reasonable diligence, could not have been known to him.

PART XIX MISCELLANEOUS

Confidentiality.

120. No person who has acquired information in his capacity as —

- (a) director, officer, employee or agent of any co-operative credit union or former co-operative credit union;
- (b) counsel and attorney, consultant or auditor of the Central Bank or as an employee or agent of such counsel and attorney, consultant or auditor;
- (c) counsel and attorney, consultant, auditor, accountant, receiver or liquidator of any co-operative credit union or former co-operative credit union or as an employee or agent of such counsel and attorney, consultant, auditor, accountant, receiver or liquidator;
- (d) auditor of any customer of any co-operative credit union or former co-operative credit union or as an employee or agent of such auditor,

shall, without the express or implied consent of the customer concerned, disclose to any person any such information relating to the identity, assets, liabilities, transactions or accounts of a customer of a co-operative credit union or relating to any application

by any person under the provisions of this Act, as the case may be, except —

- (i) for the purpose of the performance of his duties or the exercise of his functions under this Act, if any;
- (ii) for the purpose of the performance of his duties within the scope of his employment;
- (iii) when a co-operative credit union is lawfully required to make disclosure by any court of competent jurisdiction within The Bahamas, or under the provisions of any law of The Bahamas;
- (iv) for the purpose of enabling or assisting the Governor to exercise any functions conferred upon him by any written law;
- (v) to a person with a view to the institution of, or for the purpose of—
 - (aa) criminal proceedings;
 - (bb) disciplinary proceedings, relating to the exercise by a counsel and attorney, auditor, accountant, valuer or actuary of his professional duties; or
 - (cc) disciplinary proceedings relating to the discharge by a public officer or a member or employee of the Central Bank of his duties.

121. (1) A copy of any entry in a book of a co-operative credit union regularly kept in the course of business shall, if certified in such manner as may be prescribed in the bye-laws, be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case to the same extent as, the original entry itself is admissible.

Evidence of documents and entries in books.

(2) No officer of any co-operative credit union shall, in any legal proceedings to which the co-operative credit union is not a party, be compelled to produce any of the books of the co-operative credit union, the contents of which can be proved under subsection (1) or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the court for special reasons so directs.

(3) Every copy of rules or other instruments or documents, and every extract of an instrument or document, bearing the seal of the Central Bank, shall be received in evidence without further proof and every document purporting to be signed by the Governor or other officer of the Central Bank under this Act shall, in the absence of any evidence to the contrary, be received in evidence without further proof of the signature.

Exemption from stamp duties and other fees.

122. (1) Every co-operative credit union registered under this Act is exempt from any stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of such co-operative credit union or by an officer or member relating to the business of such co-operative credit union, any class of such instruments, are respectively chargeable.

(2) The instruments or transactions relating to any loan granted under this Act shall be exempt from the payment of stamp duty under the Stamp Act.

Ch. 370.

Non-application of certain Acts.

Ch. 314.

Ch. 308.

Ch. 313.

Ch. 6.

Ch. 316.

Ch. 69.

Ch. 370A.

Ch. 369A.

Regulations.

123. Save as expressly provided in this Act, the Co-operative Societies Act, the Companies Act, the Friendly Societies Act, the Minors Act, the Banks and Trust Companies Regulation Act, the Bankruptcy Act, the Value Added Tax Act and the Investment Funds Act do not apply to co-operative credit unions registered under this Act.

124. (1) The Central Bank, after consultation with the Minister, may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made —

- (a) prescribing fees or charges under this Act;
- (b) prescribing the procedures for appeals to the Central Bank pursuant to section 93;
- (c) exempting any co-operative credit union from any provision of this Act;
- (d) prescribing any other matter required or authorised to be prescribed by this Act.

Fees.

125. All fees and charges collected by the Central Bank under or by virtue of this Act shall be paid into the Consolidated Fund.

Transitional provisions.

Ch. 314.

126. (1) Notwithstanding any other provisions of this Act, any credit union which prior to the commencement of this Act was duly registered under the Co-operative

Societies Act shall be deemed to be registered under this Act.

(2) The Central Bank shall issue a certificate of continuance to a credit union referred to under subsection (1) to take effect from the date of the commencement of this Act.

(3) The commencement of this Act shall not operate to terminate the tenure of any person then serving as a director, officer, manager or committee member of a credit union.

(4) Where a credit union is being dissolved or liquidated and dissolved pursuant to the Co-operative Societies Act, that Act continues to apply to that credit union. Ch. 314.

(5) Legal or other proceedings pending before the commencement of this Act to which the Director of Societies was a party may be continued as if the Central Bank was a party to those proceedings.

(6) Any orders, directions, appointments and other acts lawfully made under a provision of the Co-operative Societies Act, relating to credit unions, and in force immediately before the commencement of this Act, shall be taken to have been made or done under the corresponding provision of this Act and continue to have effect accordingly. Ch. 314.

127. (1) A co-operative credit union may, subject to this Act amend its bye-laws including the bye-law which declares the name of the co-operative credit union. Power to amend bye-laws.

(2) No amendment of the bye-laws shall be valid until that amendment has been registered under this Act, for which purpose three copies of the amendment shall be submitted to the Central Bank.

(3) Where the Central Bank is satisfied that the amendment of a bye-law, is not contrary to this Act, the Central Bank may register the amendment.

(4) Where the Central Bank refuses to register an amendment of a bye-law, an appeal shall lie to the Tribunal whose decision shall be final.

(5) An amendment which changes the name of a co-operative credit union shall not affect any right or obligation of the co-operative credit union or of any of its members or past members and any legal proceedings

pending may be continued by or against the co-operative credit union under its new name.

(6) Where the Central Bank registers an amendment of the bye-laws, the Central Bank shall issue to the co-operative credit union a copy of the amendment certified by the Central Bank which shall be conclusive evidence of the fact that the amendment has been duly registered.