

BIU MEMBERS CREDIT UNION CO-OP. SOCIETY

NEW CONSTITUTION

PRELIMINARY-This Constitution is subject to the Credit Unions Act 2010 and is referred to herein as the 'Act'

PART 1

MEMBERSHIP

1. Application and qualification for and limitations on membership

(1) An application for membership of the Credit Union shall be submitted to the Board in such form as the Board may approve.

(2) In order to qualify for the membership of the Credit Union, a person, other than a registered Credit Union-

- (a) shall be a citizen or resident of Bermuda;
- (b) shall not be an undischarged bankrupt;
- (c) shall not be certified to be of unsound mind; and
- (d) shall be sixteen years of age or over.

(3) An individual who is over sixteen years of age may be admitted as a member of the Credit Union.

(4) A member of the Credit Union who has not attained the age of sixteen years may not obtain credit from the Credit Union and may not serve as a member of the board of directors, the supervisory committee or the credit committee.

(5) The Board shall approve each applicant for membership at monthly Board meetings.

(6) Subject to subsection (7), a person may be a member of more than one Credit Union, if

- (a) the person has truthfully disclosed in his or her application for membership of the Credit Union the name of any other Credit Union of which the person is a member; and
- (b) both Credit Unions have as a primary object the granting of loans to their members and the person has fully disclosed to the first Credit Union that he or she has applied for membership of the second Credit Union.

(7) A person who is a member of the Credit Union shall not apply for membership of another Credit Union unless his or her application is accompanied by the written consent of the Credit Union of which he or she is already a member to his or her proposed dual membership.

(8) The field of membership of the BIU Members Credit Union Co-op. Society shall be as follows:

- a. members of the Bermuda Industrial Union, together with their spouses and immediate members of their families;
- b. ***the Bermuda Industrial Union as an organization***
- c. ***such body corporate owned by the Bermuda Industrial Union***
- d. the employees of the Credit Union
- e. ***members of registered Trade Unions and Workers Associations in the islands of Bermuda***

2. Accounts of individual sole

Membership must be an individual sole. Where a member requires a spouse or significant other to be party to the account a Power of Attorney must be issued by the member.

3. Membership fees and membership register

(1) A person shall not exercise the rights of membership of the Credit Union unless the person has paid the prescribed membership fee and qualifying share, and has satisfied any other requirement which may be specified in the bylaws.

(2) The Credit Union shall keep a register of members in which shall be recorded—

- (a) the names and addresses of its members; and
- (b) the date on which a person becomes a member and the date, if any, on which the person ceases to be a member; and
- (c) such other details as may be prescribed.

4. Liability of past and present members

- (1) Subject to this Act, the liability of a current member of the Credit Union is limited to the unpaid amount of his or her subscription for shares.
- (2) The liability of a past member or the estate of a deceased member for debts of the Credit Union as they existed on the date on which the member ceased to be a member or died continues for a period of two years after the cessation of membership or death.

5. Withdrawal of membership

- (1) A member of the Credit Union may at any time withdraw from membership of the Credit Union in such a manner as may be prescribed by the bylaws or the Regulations.
- (2) Withdrawal of membership from the Credit Union shall be by written notice addressed to the Board.
- (3) Withdrawal of membership from the Credit Union shall not affect any existing liability of the member to the Credit Union.

6. Termination of membership by Board

- (1) Subject to the bylaws, the Board may, by a vote of at least two-thirds of the directors present at a meeting called for the purpose, order the termination of membership of a member of the Credit Union.
- (2) Where the Board terminates the membership of a member under this section—
 - (a) the Board shall—
 - (i) within a period of one year, purchase from the member at par value all shares in the Credit Union held by the member; and
 - (ii) pay to the member all amounts held to the member's credit, together with any interest accrued on those amounts and the amount outstanding on loans made to the Credit Union by the member with any interest accrued on those amounts;
 - (b) the secretary of the Credit Union shall, within ten days from the date on which the order is made, notify the member of the order in writing;
 - (c) the member may appeal the order to the next general meeting of the Credit Union by giving written notice of his or her intention to appeal to the secretary within thirty days from the date the member received notice of the order under paragraph (b); and
 - (d) and where the member appeals under paragraph (c), a majority or any greater percentage that may be specified in the bylaws, of the members present at the general meeting shall confirm or rescind the order.
- (3) Where the address of a member the termination of whose membership is ordered under subsection (1) is unknown to the Credit Union after all reasonable efforts have been made to ascertain the member's address for the purpose of making payment to him or her of all amounts held to his or her credit, the Credit Union shall transfer those amounts to its statutory reserves.
- (4) Where any amounts are transferred under subsection (3), the Credit Union shall pay those amounts to the person entitled to them on proof of the person's claim that is satisfactory to the Credit Union.

7. Termination of membership by members

Members may terminate the membership of a member where—

- (a) the member has received at least ten days notice of the general meeting at which his or her membership is to be considered; and
- (b) the termination is approved by a majority of at least two-thirds of the members who—
 - (i) are present at the general meeting; and
 - (ii) cast votes on the resolution.

8. Suspension of membership

Subject to the bylaws, the Board may by notice in writing suspend a member for a period not exceeding three months if they are satisfied that the member is guilty of misconduct.

9. Appeal

(1) Subject to subsection (2), where a person's membership is terminated under section 6 or 7, or suspended under section 8, the person may appeal against the termination or suspension to a tribunal comprised of one person selected by the Board of Directors and one person selected by the aggrieved member and a third member mutually agreed to as Chairman. The tribunal shall confirm or set aside the resolution terminating or suspending the membership.

(2) A person whose membership is terminated for failure to pay fees or to fulfil other financial obligations to the Credit Union is not eligible to appeal against the termination of his or her membership to a tribunal under subsection (1).

(3) Where a person appeals against the termination of his or her membership under section 6(2)(c) or this section, notwithstanding the resolution terminating his or her membership, the person continues to be a member until the termination of his or her membership is confirmed by the meeting of members under section 6(2)(d) or by a tribunal under this section.

10. Re-admittance

A person whose membership is terminated under section 6 or 7 may be re-admitted to membership only by a two-thirds majority vote of members present and voting at a general meeting.

11. Voting rights of a member who is not an individual

A trade union, an association, another type of co-operative, a sporting or community-based organisation that is a member of the Credit Union shall exercise its voting rights in that Credit Union through one of its members duly appointed in that behalf as a delegate and shall exercise the same rights and powers ascribed to an individual member in this Act.

12. Representatives of member who is not an individual

(1) Where a trade union, an association, another type of co-operative, a sporting or community-based organisation is a member of the Credit Union, the latter Credit Union shall recognise any individual authorised by a resolution of the directors of that organisation to represent it at meetings of the Credit Union.

(2) An individual authorised under subsection (1) may exercise, on behalf of the Credit Union, all the powers of membership ascribed to an individual member in this Constitution.

PART 2

MEETINGS

13. Place of meetings

General meetings of members shall be held in Bermuda—

i.(a) at the place provided in the bylaws; or

(b) at the place determined by the Board.

ii. If for any extraordinary reason the meeting is being mooted to be held outside of Bermuda this must be approved by a 3/4 majority at the preceding General meeting.

14. Members not to exercise rights until due payment

A member shall not exercise the rights of a member unless the member has made payment to the Credit Union in respect of membership or acquired an interest in the Credit Union as specified in the bylaws of the Credit Union or as prescribed.

15. First general meeting

(1) Within two months of the date of its registration, the Credit Union shall hold a general meeting at which all members are entitled to be present and to vote.

(2) Notwithstanding subsection (1), where the Board informs the members of the Credit Union consistent with the Credit Unions Act the members consistent with the Credit Unions Act may extend the time for holding the general meeting.

(3) The business at the general meeting mentioned in subsection (2) shall include—

(a) the adoption of the bylaws;

- (b) the adoption of forms of share certificates and records of the Credit Union;
- (c) the authorising of the issue of shares;
- (d) the appointment of an auditor to hold office until the next annual general meeting;
- (e) the making of banking arrangements; and
- (f) the transaction of any other business.

16. Annual general meetings

- (1) The Credit Union shall hold an annual meeting in each year not later than four months after the end of the financial year of the Credit Union.
- (2) Notwithstanding subsection (1), where the annual general meeting consistent with the Credit Unions Act receives a written request from the Board of the Credit Union prior to the expiration of the period of four months referred to in subsection (1), the general meeting consistent with the Credit Unions Act in every case may authorise the Credit Union to hold the annual general meeting at any date not later than six months after the end of the financial year of the Credit Union that the general meeting considers appropriate.
- (3) The bylaws may provide for holding semi-annual or other periodic meetings.
- (4) Order of Meetings

The order of business at Annual General Meeting shall be -

- a) Ascertaining a quorum ;
- b) Accepting apologies for absence;
- c) Reading and approval of the Minutes of the last Annual General Meeting, and of any intervening Special General Meeting and discussion of matters arising therefrom;
- d) Taking Reports of -
 - i. Board of Directors
 - ii. Other Sub-Committees
 - iii. Treasurer and Auditor
 - iv. Credit Committee
 - v. Supervisory Committee
- e) Distribution of surplus;
- f) Recommending any loan write-offs;
- g) Fixing of Maximum Liability Limit of borrowing by the Credit Union;
- h) Elections to:
 - 1. Board of Directors
 - 2. Credit Committee
 - 3. Supervisory Committee
 - 4. Management of any Registered Society
- i) Any other business;
- j) Adjournment.

17. Special general meeting

- (1) The Board may call a special general meeting of the members of the Credit Union at any time.
- (2) Subject to subsection (3), the Board shall call a special general meeting of the members on receipt of a written request, specifying the purpose of the meeting, from such number of members as may be specified in the bylaws.
- (3) The Board shall call the special general meeting mentioned in subsection (2) within twenty days of its receipt of the request and the special meeting shall dispose of the business specified in the request.
- (4) The members consistent with the Credit Unions Act may call a special general meeting of the Credit Union—
 - (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the Credit Union’s affairs ordered or made by the Bermuda Monetary Authority (the Authority), or
 - (b) where the Credit Union fails to hold an annual general meeting in accordance with section 16(1) or (2), for the purpose of enabling members to secure any

information regarding the affairs of the Credit Union that they are entitled to receive under this Act and to deal with any matters affecting the Credit Union.

18. Meeting called by the Authority

- (1) Where—
- (a) in the opinion of the Board, it is impracticable—
 - (i) to call a general meeting of members in the manner in which meetings of members may be called; or
 - (ii) to conduct a general meeting of members in the manner prescribed in this Act or in the bylaws; or
 - (b) for any reason, in addition to those described in paragraph (a), the Authority consistent with the Credit Unions Act considers appropriate,
- the Authority consistent with the Credit Unions Act by its own initiative may, if satisfied that such a meeting is warranted in the circumstances, order a general meeting to be called, held and conducted in any manner that the Authority may direct.
- (2) Without restricting the generality of subsection (1), the Authority consistent with the Credit Unions Act may order that the quorum required in this Act or the bylaws be varied or dispensed with at a general meeting called under this section.
- (3) A general meeting called under this section shall be a valid general meeting.

19. Resolution in lieu of meeting

- (1) Except where a written statement is submitted by an auditor under section 106
- (a) a resolution in writing signed by the number of members entitled to vote on that resolution at a general meeting of members as may be specified in the bylaws is as valid as if it had been passed at a general meeting of the members; and
 - (b) a resolution in writing dealing with any matter required by this Act to be dealt with at a general meeting of members and signed by all the members entitled to vote at that meeting—
 - (i) satisfies all the requirements of this Act relating to meetings of members; and
 - (ii) subject to subsection (2), is effective from the date specified in the resolution.
- (2) The effective date of a resolution described in subsection (1)(b)(ii) shall not be earlier than the date on which the first member signed the resolution.
- (3) A copy of every resolution described in subsection (1) shall be kept with the minutes of the meetings of members.

20. Notice of meetings

- (1) The Credit Union shall give at least ten days notice of any annual meeting or special meeting to its members—
- (a) by sending the notice by mail to the members, at the addresses given in the register of members; or
 - (b) by publishing the notice in not less than two issues of a newspaper published and circulated in Bermuda, or by posting the notice in a place or through a medium of communication that, as stipulated in the bylaws and in the opinion of the Board, is prominent and accessible to members.
- (2) Notwithstanding any other provision of this Act, where the Credit Union is required to send a statement, agreement, proposal or other document to its members with a notice of a meeting and decides to insert the notice of a meeting in a newspaper under paragraph (1)(b), the Credit Union shall—
- (a) in the notice, inform the members of the document, giving a description of the document that, in the opinion of the Board, is adequate to describe its nature; and
 - (b) make a copy of the document available to any member or delegate who requests it.
- (3) The notice of any special meeting shall specify the purpose for which the meeting is being called.
- (4) The proceedings or the business transacted at a general meeting shall not be invalidated by reason only of the non-receipt by a member of notice of the meeting.

21. Quorum

- (1) Subject to subsection (2), the quorum at any annual general or special meeting of members shall be that specified in the bylaws.
- (2) Subject to the bylaws, where a quorum is present at the opening of a general meeting of members the members present may proceed with the business of the meeting.

(3) Where a quorum is not present thirty minutes after the time fixed for the commencement of a general meeting of members-

[a] the members present may adjourn the meeting to a time and place to be determined by the Board but not later than thirty days after the date of the adjourned meeting and may not transact any other business.

[b] the Annual General Meeting consistent with the Credit Unions Act or the Authority's representative may direct that the meeting proceeds if the Annual General Meeting consistent with the Credit Unions Act is satisfied that the meeting was convened in accordance with the Act and that the members present were properly notified and constitute at least seventy five per cent of the amount required for a quorum. The quorum shall be fifty (50) and may be reduced by 25% after thirty (30) minutes of the time to commence the meeting.

(5) If at the adjourned meeting there is no quorum the members present constitute a quorum and may proceed with the meeting.

22. Notice of motion

(1) A member who is entitled to vote at an annual meeting of members may—

(a) submit to the Credit Union a notice of motion with respect to any matter that he or she proposes to raise at the meeting; and

(b) discuss at the meeting any matter with respect to which he or she would have been entitled to submit a notice of motion.

(2) Where a member submits a notice of motion and requests the Credit Union to send the notice of motion with the notice of the meeting at which the motion is to be presented or make the notice of motion available to all members entitled to attend and vote at that meeting, the Credit Union shall comply.

(3) Where a member submits a notice of motion and requests the Credit Union to include in or attach to the notice of motion—

(a) a statement by the member of not more than two hundred words in support of the motion; and

(b) the name and address of the member,
the Credit Union shall comply.

(4) The Credit Union is not required to comply with subsections (2) and (3) where—

(a) the notice of motion is not submitted to the Credit Union at least forty-five days before the anniversary date of the previous annual general meeting of members;

(b) in the opinion of the directors, the notice of motion is submitted by the member primarily for

(i) enforcing a personal claim or redressing a personal grievance; or

(ii) promoting general economic, political, racial, religious, social or similar causes;

(c) the Credit Union, at the member's request, included a notice of motion in a notice of a meeting of members held within two years preceding the receipt of the notice of motion submitted under subsection (1), and the member failed to present the notice of motion at the meeting;

(d) substantially the same notice of motion was submitted to members in the notice of a meeting of members held within two years preceding the receipt of the members request, and the notice of motion was defeated; or

(e) in the opinion of the Board, the rights conferred by this section are being abused to secure publicity.

(5) A member who requests that a notice of motion and any statement be sent with the notice of the meeting at which the motion is to be presented shall pay the cost of sending the notice of motion and statement, unless the members present at the meeting provide otherwise by a majority vote.

(6) The Credit Union or a person acting on behalf of the Credit Union shall not incur any liability by reasons only of circulating a notice of motion or statement in compliance with this section.

(7) Where the Credit Union refuses to include a notice of motion in a notice of a meeting, the Credit Union shall, within thirty days after receiving the proposal—

(a) notify the member submitting the notice of motion of its intention to omit the notice of motion from the notice of the meeting; and

(b) send to the member a statement of the reasons for the refusal.

(8) Where a member claiming to be aggrieved by a refusal under subsection (7) applies to a tribunal, the General Meeting consistent with the Credit Unions Act 2010 may suspend the holding of the meeting to which the motion is sought to be presented and give any directions that it may consider appropriate.

(9) The Credit Union or a person claiming to be aggrieved by a notice of motion may apply for permission for the Credit Union to omit the notice of the meeting and, where the General Meeting consistent with the Credit Unions Act 2010 is satisfied that subsection (5) applies, the General Meeting consistent with the Credit Unions Act 2010 may give permission.

(10) In this section “notice of motion” means a notice of motion submitted to the Credit Union under subsection (1)(a).

23. Voting procedure

(1) Subject to the bylaws, members shall vote—

(a) by a show of hands; or

(b) where the majority of the members entitled to vote at a meeting so demands, by secret ballot.

(2) The chairperson of a meeting has the right to vote, and in the event of a tie he or she is entitled to a second or casting vote.

(3) Subject to this Act and the bylaws, a majority of the members who are present and cast votes at a meeting shall decide all questions.

24. Power to make bylaws

(1) Subject to this Act and the bylaws, the members of the Credit Union may, at any annual meeting or any special meeting called for the purpose, make, amend, repeal, replace or confirm any bylaws, where written notice of the proposed making, amendment, repeal, replacement or confirmation—

(a) is forwarded to each member of the Credit Union with the notice of the meeting at which the making, amendment, repeal, replacement or confirmation is to be considered, by a majority of members present and voting at that meeting; or

(b) having been received by each member of the Credit Union with the notice described in paragraph (a), is approved by a three-fourths majority of members present and voting at the meeting.

(2) A member may make a proposal, in the manner provided in section 23, to make, amend, repeal, replace or confirm any bye-law.

25. Effective date of the bylaws

(1) Bylaws shall not have any force or effect unless three copies of the bylaws are certified to be true copies by the president and secretary of the Credit Union. The approved bylaws shall be filed with the Authority.

(2) Subject to subsection (3), where proposed bylaws are certified under subsection (1) and receives the members’ approval required in section 24(1), the bylaws shall have immediate force and effect.

(3) Bylaws described in subsection (2) shall cease to have any force or effect on the expiration of sixty days after the date of the general meeting in which it is approved by the members, unless, within that sixty-day period, the bylaws are filed with the Authority under subsection (1).

(4) Where the membership approves the bylaws, a certified copy shall be placed on the Credit Union’s files at its registered offices.

PART 3

GOVERNANCE AND MANAGEMENT

26. Board of directors

(1) The Credit Union shall be governed and managed by a Board of Directors which shall be constituted in accordance with this Act and the bylaws of the Credit Union.

(2) The Board shall be constituted by not less than five or not more than fifteen directors, as specified in the bylaws. The BIU shall have not less than a majority of 80% of directors unless agreed to the BIU. The reduction to 80% may only be by attrition.

(3) The members of the Credit Union may amend the bylaws to vary the number of directors, but no amendment to decrease the number of directors shall affect an incumbent director.

(4) A person who—

- (a) has been sentenced by a in any country for an offence involving fraud or dishonesty and has not received a free pardon for that offence;
- (b) is not in good financial standing with the Credit Union;
- (c) has made an arrangement with his or her creditors;
- (d) was a director of a failed Credit Union of the same type;
- (e) has been convicted on indictment of an offence in connection with the promotion, formation or management of a body corporate;
- (f) has been convicted of an offence under this Act;
- (g) is of unsound mind and has been so found by a court in Bermuda;
- (h) is or becomes bankrupt;
- (i) is under the age of eighteen years;
- (j) has not been a member of the Credit Union or a duly appointed representative of a member Credit Union for the past twelve months;
- (k) is a member who has not transacted any business with the Credit Union for twelve consecutive months, or who represents a member Credit Union who has not transacted any business with the Credit Union for twelve consecutive months;
- (l) is an employee of the Credit Union or of the Authority, or is a partner or employee of the Credit Union's auditor, or of the apex body;
- (m) holds less than the minimum level of equity shares in accordance with section 3(1); or
- (n) is already part of the management of another Credit Union of the same type, shall not be deemed 'fit and proper' and shall not constitute part of the management of the Credit Union, until his or her disability is removed, but he or she shall retain his or her membership of the Credit Union during the period of such disability.

(5) For the purposes of this Part "management" includes—

- (a) a person who holds membership of the Board or any committee established by the Credit Union; and
- (b) a person who is employed by the Board.

(6) A person who knowingly holds membership of the Board or of a committee of the Credit Union, or who knowingly seeks employment with, or is employed or continues to be employed by the Credit Union whilst disqualified under this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding one year or both.

27. Officers

(1) The Board of Directors may appoint one or more Assistant Treasurers, none of whom may hold any other office and authorise them, under the direction of the Treasurer, to perform any of the duties devolving upon the Treasurer, including the signing of cheques. When designated by the Board, any Assistant Treasurer may also act as Treasurer upon the absence of the Treasurer or in the event of the Treasurer's inability to act. Surety bond coverage for the Assistant Treasurer shall be the same as for the Treasurer.

(2) The Board of Directors may appoint an executive committee of not fewer than three Directors, to serve at its pleasure, to act for it in the purchase and sale of securities and the making of loans to other credit unions in accordance with the law and regulations. The Board may also authorise either such executive committee or membership officer appointed by the Board to serve at its pleasure from among the members of this Credit Union other than the Treasurer, an Assistant Treasurer or General Manager to approve the applications for membership under such conditions as the Board and these rules may prescribe. No executive member or membership officer shall be compensated as such.

(3) The Board may have any officers in addition to those mentioned in paragraph (a) that are provided for in the bylaws.

(4) Subject to the bylaws—

- (a) the Board may designate the officers of the Credit Union, appoint persons as officers, specify the officers' duties and delegate powers to manage the business and affairs of the Credit Union to them; and
- (b) a director may be appointed as an officer of the Credit Union.

(5) A person shall be not president, vice-president or treasurer of the Credit Union unless he is a director of the Credit Union.

28. Provisional and elected directors

(1) On the registration of the Credit Union, the individuals whose names appear in the application for registration as having been appointed and have consented to act as provisional directors—

- (a) shall have all the powers and perform the duties of directors; and
- (b) shall hold office until the first general meeting.

(2) At the first general meeting and at every annual general meeting the directors shall be elected in accordance with this Act, the Regulations made under this Act and the bylaws.

29. Powers of the Board

Subject to this Act, the Regulations and the bylaws, the Board shall—

- (a) exercise the powers of the Credit Union directly, or indirectly through the employees and agents of the Credit Union;
- (b) formulate and implement the policies of the Credit Union;
- (c) review quarterly and annual returns and reports and ensure their timely submission to the Authority; and
- (d) ensure the good governance and direct the management of the business and affairs of the Credit Union.

30. Committees generally

(1) The Board may establish committees for the more efficient management of various aspects of the business or affairs of the Credit Union.

(2) A committee established under subsection (1) may consist of members of the Board and other members of the Credit Union.

(4) No committee may—

- (a) fill vacancy among the directors;
- (b) declare a bonus or a dividend;
- (c) approve any financial statement of the Credit Union;
- (d) submit to the members any question or matter requiring the approval of members; or
- (e) make decisions where this Act or the bylaws require a two-thirds majority or a unanimous vote of the Board.

31. Tenure of committees generally

(1) Committees appointed under section 30(1) shall hold office for a period not exceeding one year.

(2) A committee member appointed under section 30(1) may be removed by resolution of the Credit Union or of the Board.

(3) The removal of a committee member who is a director shall not affect his or her office as a director.

(4) A committee shall—

- (a) fix its quorum at not less than a majority of its members;
- (b) keep minutes of its proceedings; and
- (c) submit to the Board at each meeting of the Board and to the annual general meeting of the Credit Union the minutes of the committee's proceedings since the most recent meeting of the Board or of the Credit Union.

32. Credit committee

(1) The Credit Union shall have a credit committee which shall be elected by its members at the annual general meeting.

(2) A person shall not be elected to the credit committee if the person is not present at the meeting at which the election is held, unless the person tenders an excuse for his or her absence which is accepted by the majority of the members present.

(3) The members of the credit committee shall hold office for such term as the bylaws provide and until their successors are elected.

(4) The credit committee shall consist of such number of members as may be fixed by the bylaws, which shall be not less than three.

(5) A person shall not be a member of the credit committee if that person is a member of the Board or of the supervisory and compliance committee or is an employee of the Credit Union, or has a delinquent loan with the Credit Union.

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

(7) The election of members of the credit committee shall proceed in keeping with subsections (a) to (d) of section 45 (1).

(8) Where a vacancy occurs in the credit committee, the Board may fill the vacancy until the next annual meeting of the Credit Union.

(9) The bylaws of the Credit Union may provide for the election and retirement of members of the credit committee in rotation but no person may serve as a member of the credit committee of the Credit Union for more than two consecutive terms or an aggregate of six successive years.

33. Duties of credit committee

The credit committee shall—

(a) implement and ensure implementation of the approved loan policy;

(b) provide prudent oversight of the loans portfolio, including loan loss prevention, monitoring collections, delinquency controls and provision for bad and doubtful debts;

(c) make recommendations to the Board in respect of the loan policy of the Credit Union; and

(d) perform such duties as may be prescribed under this Act, the Regulations and the bylaws of the Credit Union.

34. Approval of loans

(1) The Board shall determine the terms and conditions under which the credit committee shall approve loans to members.

(2) The credit committee may, upon such terms and conditions as the Board may specify, authorise the manager, loans manager or other employees of the Credit Union to approve loans to members.

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

(4) The responsibilities and duties of any person authorised to approve loans under subsection (2) are concurrent with the responsibilities and duties of the credit committee.

35. Credit committee reports

(1) The credit committee shall—

(a) meet at least once every month;

(b) keep minutes of its meetings;

(c) submit a monthly report to the Board stating—

(i) the number and category of loan applications;

(ii) the number and category of loans granted;

(iii) the security taken and risks for loans granted; and

(iv) applications denied, delinquent loans, classified loans, loans written off, watch listed accounts, large credit exposures and related party loans; and

(d) submit an annual report on the matters referred to in paragraph (c), and on the loan portfolio quality and trends, to the annual meeting of the Credit Union.

(2) The members of the Credit Union may, by special resolution in a special meeting called for the purpose, remove a credit committee which fails to comply with subsection (1)(c).

36. Removal of members of credit committee

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

(2) The notice calling the meeting of members referred to in subsection (1) shall specify that the purpose of the meeting is to remove the member of the credit committee who is named in the notice.

(3) A member of a credit committee removed under this section shall have the right to make such representations at the general meeting to the members of the Credit Union regarding the resolution for his or her removal as he or she may think fit, and may be represented at the general meeting by an attorney-at-law or an agent.

37. Removal of members of credit committee by Board

Where a member of a 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 the member as a member of the credit committee, the member's position on the credit 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 Credit Union.

38. Supervisory and compliance committee

(1) The Credit Union shall have a supervisory and compliance committee who shall be elected by its members at the annual general meeting.

(2) A person shall not be elected to a supervisory and compliance committee if that person is not present at the meeting at which the election is held, unless he or she tenders an excuse for his or her absence which is accepted by the majority of the members present.

(3) The members of a supervisory and compliance committee shall hold office for a term of three years or until such time that their successors are elected whichever is later.

(4) The supervisory and compliance committee shall consist of the number of members specified in the bylaws, which shall be not fewer than three.

(5) A person who is a member of the Board or the credit committee or who is an employee of the Credit Union shall not be a member of the supervisory and compliance committee.

(6) A majority of members of the supervisory and compliance committee shall constitute a quorum.

(7) The election of members of the supervisory and compliance committee shall proceed in keeping with subsections (a) to (d) of section 45 (1).

(8) Where a vacancy occurs in the supervisory and compliance committee, the supervisory and compliance committee may fill such vacancy until the next annual meeting of the Credit Union.

(9) The bylaws of the Credit Union may provide for the election and retirement of members of the supervisory and compliance committee in rotation, except that a member of the supervisory and compliance committee shall not-

(a) serve or more than six successive years but shall become eligible for re-election after the expiration of one year.

39. Duties, functions and powers of supervisory and compliance committee

(1) The supervisory and compliance committee shall—

(a) keep minutes of its meetings;

(b) make or cause to be made not less than twice in the period before the next annual general meeting of the Credit Union, an examination of the books and documents of the Credit Union which shall include an inspection of the securities, cash accounts and all records relating to loans, purchases and sales;

(c) make or cause to be made, once in the period before the next annual general meeting, a comparison between the pass-book or statement of account of a random sample of at least 10% of all the members of the Credit Union and the appropriate records of the Credit Union;

(d) ascertain that all actions and decisions of the Board, committees, management and staff relating to the affairs of the Credit Union are in accordance with this Act, the Regulations, the bylaws and the approved standards and policies of the Credit Union;

(e) submit a written report on the results of its examinations and enquiries under this section to the Board and the management of the Credit Union within seven days of each meeting of the supervisory and compliance committee; and

(f) submit a written report on the result of its examinations and enquiries under this section to the next annual general meeting or, if it thinks fit, to a special general meeting of the Credit Union.

(2) The supervisory and compliance committee shall have access, at all times, to the books and documents of the Credit Union.

(3) Members of the supervisory and compliance committee may attend meetings of the Board and all other committees of the Credit Union as observers.

40. Compliance officer

(1) The Board may consider the appointment of a senior qualified professional to monitor and periodically report to the supervisory and compliance committee and the Board on the levels of awareness, adherence and compliance in the internal operations of the society.

(2) A compliance officer appointed under subsection (1) shall track gaps and improvements in compliance with the Act, other applicable legislation, standards and best practices in keeping with legislation and guidelines in force for relating to anti-money laundering and combating terrorist financing.

41. Misappropriation and other contraventions of the Act

(1) When the supervisory and compliance committee is of the opinion that the funds, securities or other property of the Credit Union have been misappropriated or misdirected, or that the bylaws of the Credit Union, this Act or the Regulations have been contravened, by the Board or a director, the credit committee or a member of the credit committee or employee or agent engaged by the Board, the supervisory and compliance committee shall immediately inform the Board and the Annual General Meeting consistent with the Credit Unions Act in writing.

(2) The supervisory and compliance committee shall with the approval of the Board appoint an auditor or some other body to undertake a review to investigate or assist in determining whether any of the funds, securities or other property of the Credit Union have been misappropriated or misdirected and the remuneration of any auditor or other body to be appointed shall be determined by the supervisory and compliance committee and paid by the Credit Union.

(3) In the event of a misappropriation or misdirection or contravention, or a suspected misappropriation or misdirection or contravention, pending the outcome of the investigation or review referred to in subsection (2), the supervisory and compliance committee may suspend any member of the Board or member of the credit committee after having given the member an opportunity to be heard by the supervisory and compliance committee.

(4) On the completion of the investigation or review referred to in subsection (2), if the supervisory and compliance committee considers that the Board, a director, the credit committee or an officer or employee engaged by the Board has taken any action or decision which is not in accordance with this Act, the Regulations or the bylaws, then, where appropriate in consultation with the Authority, the supervisory and compliance committee may—

- (a) suspend the officer by a unanimous vote of all the members of the supervisory and compliance committee taken at a meeting of the supervisory and compliance committee called for the purpose of considering the officer's suspension; and
- (b) convene a special general meeting of the Credit Union to consider whether to remove the officer in light of the action or decision taken by the officer.

Where there was no consultation with the Authority leading to the action being taken, the Credit Union will then notify the Authority of the action taken

(5) Where the Board or a Board member, the credit committee or a member of that committee or an officer or employee engaged by the Board has been suspended by the supervisory and compliance committee in accordance with subsection (4), the committee shall convene for a date not more than twenty-one days after the suspension, a special general meeting of the society—

- (a) for the purpose of reviewing the suspension; and
- (b) to consider whether to remove the officer in the light of the action or decision taken by the officer.

(6) Without prejudice to the requirements of section 39, not less than ten days before the date of a meeting of the supervisory and compliance committee called as mentioned in subsection (4) or the date of a special general meeting of the Credit Union convened as mentioned in subsection (4) or (5), the supervisory and compliance committee shall give written notice of the meeting to the special general meeting consistent with the Credit Unions Act and to the officer concerned.

(7) At a special general meeting of the Credit Union held under this section, the members of the Credit Union, according to the purpose or purposes for which the meeting was convened, may, by secret ballot—

- (a) ratify the suspension of the officer concerned and remove the officer from office; or
- (b) rescind the suspension of the officer,

but an officer shall not be removed from office without being given an opportunity to be heard by the members present at the meeting.

(8) Where an official of the Credit Union is removed from office at a special general meeting under subsection (7), the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.

(9) A person who -

- (a) obtains possession of any property or the grant of a loan from the Credit Union by false representation or other corrupt means;
- (b) wrongfully withholds or misapplies any property belonging to or loan from the Credit Union;
- (c) wilfully applies any part of property belonging to or loan from the Credit Union for purposes other than those directed or expressed in the bye-laws of the Credit Union or authorised in this Act or the Regulations;
- (d) fraudulently removes any property comprised in a charge created in favour of the Credit Union from the place where such property was situated at the time of the execution of the charge; or
- (e) knowingly disposes of, or deal with or attempt to dispose of or deal with such property without first obtaining in writing leave of the Credit Union.

commits an offence and is liable-

- (i) on summary conviction to a fine consistent with Bermuda Law.

(10) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered by the Court-

- a. repay such amount of the loan with interest as has not been repaid at the date of the conviction and the payment of that amount shall discharge the liability of the borrower to repay the loan;
- b. to deliver up any property or repay any sum of money to which the proceedings relate; or
- c. pay the cost of the proceedings;

42. Meetings of the supervisory and compliance committee

The supervisory and compliance committee shall meet at least once every month and shall meet the Board at least four times in every year to review the Board's performance of its functions.

43. Removal of member of supervisory and compliance committee by the committee

When a member of the supervisory and compliance committee fails to attend three consecutive meetings of the supervisory and compliance committee without, in the opinion of the supervisory and compliance committee, reasonable cause, or fails to perform any of the duties allotted to the supervisory and compliance committee or a member of the supervisory and compliance committee, the member's position on the supervisory and compliance committee may be declared vacant by the remaining members of the supervisory and compliance committee who may appoint a qualified person to fill the vacancy until the next annual general meeting of the Credit Union.

44. Removal of members of supervisory and compliance committee by members

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

(2) The notice calling the meeting of members referred to in subsection (1) shall state that the purpose of the meeting is to remove the member of the supervisory and compliance committee who is named in the notice.

(3) A member of the supervisory and compliance committee removed under this section shall have the right to make such representations to the members at a general meeting regarding the resolution for his or her removal as he or she may think fit, and may be represented at the general meeting by an attorney-at-law or an agent.

45. Election of directors

(1) Subject to section 26 and to the Regulations—

- (a) the election of directors shall take place annually at the annual general meeting;

- (b) the directors shall hold office until the conclusion of the meeting at which their successors are elected, and shall be eligible for re-election;
 - (c) where the number of nominees exceeds the number of directors to be elected, the election of directors may be by secret ballot;
 - (d) every member shall have the right to vote for the number of directors to be elected and any voting sheet that contains the names of more than the number to be elected shall be void;
 - (e) where there are vacancies on the Board but the remaining directors constitute a quorum, they shall call a special meeting of the Board for the purpose of appointing members to fill any such vacancy until the next annual general meeting; and
 - (f) where there is a vacancy on the Board and there is not a quorum of directors, the remaining directors shall call a special meeting of the Credit Union for the purpose of electing members to fill any vacancy.
- (2) Where an election of directors required by this Act, the Regulations or the bylaws does not take place at the proper time, the directors then in office shall continue in office until their successors are elected.
- (3) No director may be an employee of the same Credit Union.
- (4) Unless a reasonable excuse is received in writing by the meeting, a person shall not be elected as a director if the person is not present at the meeting at which the election is being conducted.
- (5) Subject to section 26(2), the Board shall consist of such numbers as may be fixed by the bylaws.

46. Tenure of directors

- (1) Subject to subsection (3) the directors of the Credit Union shall be elected for a term of three years.
- (2) After the commencement of the Credit Unions Act 2010, on the formation of each new society or on the re-constitution of a previously registered Credit Union, at the next annual general meeting of members the election of the Board, the supervisory and compliance committee and the credit committee shall be on a rotational basis as follows:
- (a) at least one-third shall be elected to serve for one year;
 - (b) at least one-third shall be elected to serve for two years; and
 - (c) the remainder shall be elected to serve for three years,
- and thereafter each elected member of the Board, the supervisory and compliance committee and the credit committee shall serve for a term of three years.

47. Additional powers of the Board

- (1) Subject to the bylaws and the Regulations, the Board may without authorisation of the members of the Credit Union—
- (a) borrow money on the credit of the Credit Union, subject to subsection 82 (5);
 - (b) issue, re-issue, sell or pledge debt obligations of the Credit Union;
 - (c) give a guarantee on behalf of the Credit Union to secure performance of an obligation of any person; and
 - (d) mortgage, charge, hypothecate, pledge or otherwise create a security interest in all or any property of the Credit Union, owned or subsequently acquired, to secure any debt obligation of the Credit Union.
- (2) A sale, lease, exchange of all or substantially all of the property of the Credit Union, other than in the ordinary course of business of the Credit Union, shall be approved by the members in a manner provided in subsection (3) to (7).
- (3) The Board shall send, in the manner provided in section 17, a notice of a special meeting to consider the sale, lease or exchange mentioned in subsection (2) to each member.
- (4) The notice mentioned in subsection (3) shall be accompanied by a copy or summary of the agreement of sale, lease, or exchange mentioned in subsection (2).
- (5) At a special meeting held under this section, the members may by special resolution—
- (a) authorise the sale, lease or exchange mentioned in subsection (2); and
 - (b) agree to or authorise the directors to agree to any terms and conditions of sale, lease or exchange.
- (6) Each member of the Credit Union has the right to vote with respect to sale, lease or exchange mentioned in subsection (2).
- (7) A sale, lease or exchange mentioned in subsection (2) is adopted when the members of the Credit Union have approved the sale, lease or exchange by a special resolution.

48. Validity of acts of directors and officers

The act of a director or officer is valid notwithstanding an irregularity in his or her election or a defect in his or her appointment or qualification.

49. Indemnification of directors and officers

(1) Subject to subsections (2) and (3), the Credit Union may indemnify—

- (a) a director or officer of the Credit Union;
- (b) a former director or officer of the Credit Union; and
- (c) a person who acts or has acted at the request of the Credit Union as a director or officer of a body corporate of which the Credit Union is or was a member or a creditor,

against costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of the person being or having been a director or officer of the Credit Union or the body corporate.

(2) The Credit Union may indemnify a director, officer, or other person referred to in subsection (1) only where that person—

- (a) acted honestly and in good faith with a view to the best interest of the Credit Union; and
- (b) in the case of a criminal, civil or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that the conduct was lawful.

(3) The Credit Union shall not indemnify a director, officer or other person referred to in subsection (1) with respect to an action by or on behalf of the Credit Union to obtain a judgment in its favour to which the person is made a party by reason of the person being or having been a director or an officer of the Credit Union, against costs, charges and expenses reasonably incurred by the person in connection with the action unless—

- (a) the Credit Union has the approval of the court; and
- (b) the person fulfils the conditions described in subsection (2).

(4) Notwithstanding subsections (1) to (3), the Credit Union shall indemnify a director, officer or other person referred to in subsection (1) who has been substantially successful in the defence of a civil, criminal or administrative action or proceeding to which the person is made a party by reason of the person being or have been a director or officer of the Credit Union or body corporate against costs, charges and expenses reasonably incurred by the person with respect to the action or proceedings.

(5) The Credit Union or a director, officer or other person referred to in subsection (1) may apply to the court for an order approving the indemnity and the court may make the order.

(6) On an application under subsection (5), the court may order notice to be given to an interested person, and that interested person is entitled to appear and be heard in person or by an attorney-at-law.

50. Duty of care of directors and officers

Every director and officer of the Credit Union in exercising his or her powers and discharging his or her duties shall—

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

and shall be liable to make good any loss or damage suffered by the Credit Union as a direct or indirect result of a contravention of this section.

51. Ambit of duty

The provisions of a contract, the bylaws or the circumstances of his or her appointment do not relieve a director from—

- (a) the duty to act in accordance with the Credit Unions Act 2010 and the Regulations; or
- (b) liability that by virtue of a rule of law would otherwise attach to him or her with respect to negligence, default, breach of duty or breach of trust of which he or she may be guilty in relation to the Credit Union.

52. Liability of directors

- (1) Where directors vote for, or consent to, a resolution authorising, or approve by any other means—
- (a) the purchase of shares of another Credit Union contrary to section 73;
 - (b) the payment of a dividend on shares contrary to section 94;
 - (c) the payment of a bonus contrary to section 94;
 - (d) a loan or guarantee or the giving of financial assistance contrary to section 80;
 - (e) a payment of an indemnity described in section 53 to a director or a former director, without the approval of the court required by section 53(3); or
 - (f) an act not consistent with the purpose of the Credit Union as set out in its bylaws and with respect to which the Credit Union has paid compensation to a person, they are jointly and severally liable to make good any loss or damage suffered by the Credit Union.
- (2) On the application of a director, the court may declare whether or not, having regard to any circumstances the court may consider appropriate—
- (a) the Credit Union is insolvent; or
 - (b) the payment of a bonus or dividend or the lending of money would make the Credit Union insolvent.
- (3) The liability imposed by subsection (1) is in addition to and not in derogation from a liability imposed on a director by any other enactment or law.
- (4) Subject to subsection (5), for the purpose of this section, a director who is present at a meeting of directors or of a committee shall be deemed to have cast a vote in favour of a resolution or of granting the approval mentioned in subsection (1), unless—
- (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; or
 - (ii) delivered or sent by registered mail to the registered office of the Credit Union immediately after the adjournment of the meeting.
- (5) A director who votes for or consents to a resolution mentioned in subsection (1) is not entitled to dissent under subsection (4).
- (6) Where a director is not present at a meeting of directors or of a committee at which a vote, resolution or approval mentioned in subsection (1) is cast or given, the director shall be taken 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 or her written dissent to the registered office of the Credit Union.
- (7) On receipt of a written dissent, the secretary of the Credit Union shall—
- (a) certify on the written dissent the date, time and place it is received; and
 - (b) keep the written dissent in the minutes of the meeting at which the resolution was passed.
- (8) An action to enforce a liability imposed in subsection (1) shall not be commenced after two years from the date of the meeting at which the vote, resolution or approval was taken or given.
- (9) In an action to enforce a liability imposed in subsection (1), the Court may, on the application of the Credit Union or a defendant—
- (a) join as a defendant a person who received a benefit as a result of the resolution complained of; and
 - (b) make the person mentioned in paragraph (a) liable to the Credit Union jointly and severally with the directors to the extent of the amount paid to the person.
- (10) A director shall not be liable under subsection (1) where the director—
- (a) proves that he or she did not know or could not reasonably have known that the act authorised by the resolution was contrary to the Credit Unions Act 2010;
 - (b) relies and acts in good faith—
 - (i) on statements of facts represented to him or her by an officer of the Credit Union to be correct; or
 - (ii) on statements contained in a written report or opinion of the auditor of the Credit Union or a professional person engaged by the Credit Union who is competent to give advice in respect to the matter.
- (11) A director who is found liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or

property that was paid or distributed to the member, or other recipient contrary to section 73, 80 or 94.

(12) In connection with an application under subsection (11) and where the court is satisfied that it is equitable to do so, it may—

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to section 73, 80 or 94; or
- (b) make an order, other than that described in paragraph (a), that it considers appropriate.

53. Misuse of confidential information

(1) A director, officer, committee member or employee or an associate of a director, officer, committee member or employee, who, in connection with a transaction relating to shares of the Credit Union or a debt obligation of the Credit Union, makes use of confidential information for the benefit or advantage of himself or herself or an associate that, if generally known, might reasonably be expected to affect materially the value of the share or the debt obligation—

- (a) is liable to compensate any person for a 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 Credit Union for any direct benefit or advantage received or receivable by him or her or his or her associate as a result of the transaction.

(2) Subject to subsection (3), a person who has acquired confidential information concerning the Credit Union or a member of the Credit Union—

(a) as a director, committee member, officer, employee or auditor of the Credit Union;

- (b) as a liquidator, receiver or manager, of the Credit Union; or
- (c) as the Registrar, an officer or staff

shall not disclose that information except as permitted under subsection (3), or use that information for any personal benefit not related to the duties through which the information was acquired.

(3) Subsection (2) does not apply to the giving of confidential information—

- (a) where the information is given in the course of that person's duty;
- (b) where the information is a general credit rating of a person that is supplied by a director or employee of the Credit Union following a bona fide business request;
- (c) where the information relates to a member of the Credit Union and is given with the written authorisation of that member or his or her legal representative;
- (d) where the information relates to the Credit Union and is given with the written authorisation of the Credit Union or its legal representative; or
- (e) where the information is required to be disclosed by law or by an order of the Court.

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a penalty consistent with Bermuda Law.

54. Declaration of interests

(1) A director, committee member or employee of the Credit Union who—

- (a) is a party to a material contract or proposed material contract with the Credit Union; or
- (b) is a director, committee member or employee of, or has a material interest in, a person who is party to a material contract or proposed material contract with the Credit Union,

shall disclose in writing to the Credit Union the nature and extent of his or her interest.

(2) The disclosure required by subsection (1) shall be made—

- (a) immediately after the director, committee member or employee becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the Board;
- (b) if the director, committee member or employee becomes interested after a contract is made, immediately after he or she becomes so interested; or

- (c) where the director, committee member or employee has an interest in a contract before assuming office, immediately after he or she becomes a director, committee member or employee.
- (3) For the purposes of this section, a general notice to the directors by a director, committee member or employee of the Credit Union declaring that he or she is to be regarded as interested in any contract made with that person is a sufficient declaration of interest in relation to any contract made with that person.

55. Disclosure of interests at meetings

- (1) If a director, committee member or employee of the Credit Union has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Credit Union, Board or committee at which the contract, proposed contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.
- (2) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable—
 - (a) on summary conviction to a fine consistent with Bermuda Law.unless the person proves that he or she did not know that the contract, proposed contract or other matter in which he or she had a pecuniary interest was the subject of consideration at that meeting.
- (3) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Credit Union, Board or committee.
- (4) An act or proceeding of the Credit Union, Board or committee shall not be questioned on the ground that a director, committee member or employee has contravened this section.
- (5) Where a director, committee member or employee of the Credit Union is not entitled to vote at a meeting under subsection (1) and his or her presence is required to constitute a quorum at the meeting, a decision of the Credit Union, Board or committee is to be taken not to be invalid only by reason of the absence of the director, committee member or employee.
- (6) Where a director, committee member or employee of the Credit Union fails to disclose his or her interest in a contract, proposed contract or other matter in accordance with this section, a court may, on the application of the Credit Union or a member of the Credit Union, set aside the contract or other matter on any terms that the court considers appropriate.

56. Pecuniary interests for the purposes of section 56

- (1) For the purposes of section 55, a director, committee member or employee shall be treated, subject to the following provisions of this section and to section 52, as having indirectly a pecuniary interest in a contract, proposed contract or other matter if—
 - (a) he or she or his or her nominee is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration; or
 - (b) he or she is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or
 - (c) he or she or his or her partner is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract or other matter.
- (2) Subsection (1) does not apply to membership of or employment under any public body.
- (3) In the case of married persons the interest of one spouse shall be deemed for the purpose of section 55 to be also the interest of the other.

57. Removal or exclusion of disability

- (1) Section 55 does not apply to an interest in a contract, proposed contract or other matter which a director, committee member or employee of the Credit Union has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.
- (2) Where a director committee member or employee of the Credit Union has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does

not exceed what is permitted under Bermuda Law, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he or she has a beneficial interest does not exceed what is permitted under Bermuda Law section 55 shall not prohibit him or her from taking part in the consideration or discussion of the contract, proposed contract or other matter or from voting on any question with respect to it, without prejudice, however, to his or her duty to disclose his or her interest.

58. Meetings of directors generally

- (1) Subject to the bylaws, the directors may meet at any place, and on any notice that they consider appropriate.
- (2) The president—
 - (a) may call a meeting of directors at any time; and
 - (b) on the written request of at least two directors, shall call a meeting within fourteen days of the receipt of the request.
- (3) A majority of the directors shall constitute a quorum at any meeting of directors.
- (4) Subject to the bylaws, a notice of a meeting of directors may specify the purpose of or other business to be transacted at the meeting.
- (5) For the purpose of subsection (4), attendance of a director at a meeting of directors is 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) Where the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given to the directors present at that meeting, but shall be given to any directors not so present.

59. Meetings by telecommunication

- (1) Subject to the bylaws, where all the directors consent, a meeting of directors or of a committee may be held by means of—
 - (a) a telephone system; and
 - (b) a communication facility other than a 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.
- (2) Unless this Act, the Regulations or the bylaws require a meeting, a resolution of the directors may be passed without a meeting where—
 - (a) all the directors consent to the resolution in writing; and
 - (b) the consent is filed with the minutes of the proceedings of the directors.

60. Attendance at meetings

- (1) A director of the Credit Union is entitled to receive notice of and to attend and be heard at every general meeting of members.
- (2) Where a director—
 - (a) resigns;
 - (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing him or her from office; or
 - (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed or elected to fill his or her office, whether because of the director's resignation or removal or because his or her term of office has expired or is about to expire,the director is entitled to submit to the Credit Union a written statement giving the reason for his or her resignation or the reasons he or she opposes any proposed action or resolution.
- (3) The Credit Union shall immediately send a copy of the statement mentioned in subsection (2) to the Authority and shall make available a copy of the statement to every member.
- (4) The Credit Union or person acting on its behalf shall not incur any liability by reason only of circulating a director's statement sent in compliance with subsection (3).

61. Organisational meeting of directors

- (1) The directors shall hold a meeting within ten days after the issue of the Credit Union's certificate of registration.
- (2) The directors may, at the meeting mentioned in subsection (1)—
 - (a) pass resolutions establishing policies of the Credit Union;
 - (b) adopt forms of corporate records;

- (c) appoint officers;
- (d) authorise the issue of securities;
- (e) appoint an auditor to hold office until the first general meeting of the members;
- (f) make banking or other financial arrangements;
- (g) appoint authorised signing officers;
- (h) adopt operating policies; and
- (i) transact any other business.

(3) A director may call the meeting of directors mentioned in subsection (1) by giving not less than five days' notice of the meeting to each director, stating the time and place of the meeting.

(4) The notice mentioned in subsection (3) may be waived where all directors are in attendance at that meeting of directors.

62. Directors ceasing to hold office

(1) A director ceases to hold office when he or she—

- (a) resigns;
- (b) dies;
- (c) fails to attend three consecutive meetings without an accepted excuse;
- (d) fails to perform any duties allotted to him or her as a member of the Board;
- (e) is removed in accordance with section 45; or
- (f) is no longer qualified in accordance with this Act.

(2) A resignation of a director becomes effective—

- (a) with immediate effect where that person indicates to the members present at an annual general meeting that he or she is resigning;
- (b) at the time specified in a written resignation; or
- (c) where no time is specified in a written resignation, at the time the resignation is received by the Credit Union.

63. Removal of directors

(1) Subject to the Regulations and the bylaws, the members of the Credit Union may, by special resolution, remove any director from office.

(2) 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 under section 45(1)(e).

64. Notice of change of directors

(1) Within thirty days after a change is made in its directors, the Credit Union shall send to the Authority a notice in the prescribed form setting out the change and the Authority shall file the notice.

(2) Notwithstanding subsection (1), where the Credit Union sends the annual return in accordance with section 107, within thirty days after a change is made in its directors, it is not required to send the notice required by this section.

65. Declaration by directors and officers

The Credit Union may by resolution passed by a majority of the members at an annual or special meeting require all directors and officers to sign annually or at any other time that may be specified in the resolution a declaration relating to—

- (a) faithful performance of duties;
- (b) secrecy of transactions with members; and
- (c) faithful and loyal support of the Credit Union.

66. Bonding

The directors shall require that every person appointed to an office that receives, manages or handles goods, merchandise or money on behalf of the Credit Union shall give to the directors, before entering on his or her duties as an officer, security or a bond in such amount as they may require.

67. Remuneration of directors

(1) The Credit Union shall not pay any remuneration directly or indirectly to a director or committee member in connection with his or her duties or for any service performed by that person in that capacity.

(2) Nothing in subsection (1) shall be regarded as prohibiting the reimbursement of expenses—

- (a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the Credit Union; and
 - (b) which are approved by a majority of the directors voting at a meeting of the Board.
- (3) Nothing in subsection (1) shall be regarded as prohibiting any director or committee member of the Credit Union, acting not as a director or committee member but in his or her professional capacity, from tendering for the supply of, and if successful being paid for supplying, goods or services to the Credit Union.
- (4) The directors may be granted such honorarium as—
- (a) may from time to time be approved prior to its payment, or the payment of any part thereof, by the members in general meeting; and
 - (b) does not exceed an amount recommended by the Board and approved by a general meeting of the members.
- (5) The Credit Union may purchase and maintain insurance for the benefit of a director, member of a committee, officer or employee against a liability, loss and damage incurred by that person while serving the Credit Union as a director, officer, committee member or employee.

68. Remuneration of employees

Subject to section 67 and the bylaws, the directors shall fix the salary of any employees appointed by the directors and shall approve a scale of remuneration for all employees of the Credit Union.

PART 4

FINANCING

69. Shares

- (1) The Credit Union, being a co-operative society, may sell equity shares to its members only, and these shares shall be non-withdrawable but redeemable in accordance with the Regulations and the shares shall have a par value fixed by the bylaws.
- (2) Except where limited by prudential norms, the Credit Union shall have an unlimited number of shares.
- (3) A share in the Credit Union is personal property and a shareholder is entitled to an annual statement showing the number of shares that he or she owns.

70. Share capital

- (1) The Credit Union shall express its share capital in its bylaws as—
- (a) an amount of money divided into a specified number of shares set out in the bylaws; or
 - (b) an amount comprising an unlimited number of shares with a specified par value.
- (2) The Credit Union shall issue qualifying shares as well as equity shares, provided that the value of the qualifying shares and equity shares owned by the members shall not fall below the equivalent of ten per cent of the asset worth of the Credit Union as a result of any redemption of shares.
- (3) The Annual General Meeting consistent with the Credit Unions Act shall grant such period of time, not exceeding one year from the commencement of this Act, as the Annual General Meeting consistent with the Credit Unions Act considers reasonable to enable the society to make good any deficiency in the adequacy of its capital base.

71. Issue of shares

- (1) Subject to subsection (2), the Credit Union may issue shares at any time and for any consideration that the directors consider appropriate, provided that they are sold at their par value.
- (2) A member shall not be liable to the Credit Union or its creditors beyond the sum remaining unpaid on the member's subscription for shares.
- (3) The Credit Union shall not issue a share until it is fully paid—
- (a) in money; or
 - (b) in property that, in the opinion of the directors, is the fair equivalent of the money that the Credit Union would have received if the share had been issued for money.

(4) For the purposes of subsection (3)(b), when determining whether property is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and reorganisation and payment for property reasonably expected to benefit the Credit Union.

(5) For the purposes of this section “property” does not include a promissory note or a promise to pay.

72. Alteration of authorised capital

(1) Subject to the approval of the Annual General Meeting consistent with the Credit Unions Act the Credit Union may, by special resolution, increase or decrease its share capital and, for that purpose, may—

- (a) subdivide any shares;
- (b) consolidate shares into shares of a larger par value, but the par value of consolidated shares shall not be greater than one hundred dollars;
- (c) cancel any shares that, at the date of registration of the bylaws, have not been subscribed for or agreed to be issued and diminish the amount of its share capital by the amount of the par value of the shares so cancelled;
- (d) extinguish or reduce the liability on any of its shares with respect to share capital not paid up;
- (e) with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital that is lost or unrepresented by available assets; and
- (f) with or without extinguishing or reducing liability on any of its shares and either with or without reducing the number of such shares, pay off and paid-up share capital that is greater than the requirements of the Credit Union.

(2) The Annual General Meeting consistent with the Credit Unions Act may give its approval under subsection (1) where it is satisfied that—

- (a) the resolution will not contravene this Act;
- (b) the holders of all shares of the Credit Union affected by the proposed resolution have approved the special resolution passed by the members at a general meeting called for the purpose; and
- (c) in the case of a special resolution providing for a reduction in the share capital of the Credit Union—
 - (i) all creditors who are liable to be affected have been notified of the resolution and have signified their approval; or
 - (ii) appropriate steps have been taken by the Credit Union adequately to safeguard the interests of its creditors.

73. Limitation on purchase of shares

Subject to the approval of the Authority, no member or connected group may purchase more than one-fifth of the shares of the Credit Union.

74. Transfer of shares generally

(1) A share may be transferred with the approval of the Board of Directors to any person, but if the transferee is not a member, he or she must be approved as a member by the Board, or by a general meeting according to the bylaws relating to the admission of members before the transfer can be registered.

(2) If the bylaws require a member to hold more than one share, a transferee shall acquire by the transfer, or by the transfer and allotment, the number so required to be held before the transfer can be registered.

(3) A transfer of shares shall be affected in such form as the Board consistent with the Credit Unions Act may determine.

(4) A transfer of a share shall not be valid and effective unless and until such transfer has been registered by the Secretary on the direction of the Board.

(5) A transfer of a share, if made by a member indebted to the Credit Union, shall not be registered without the written permission of the Board and until the transfer is registered- a right shall not be acquired against the Credit Union by the transferee; and a claim of the Credit Union upon the transferor shall not be affected by the transfer.

75. Transfer of shares of member of unsound mind

(1) Where a member or person claiming through the Credit Union has become of unsound mind or incapable of managing his or her affairs and no committee, receiver or guardian has been

appointed, the Credit Union may subject to this section and section 76 transfer the share or interest of such member to any person nominated by such member for the purposes of section 77 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).

(2) Subject to subsection (3), if no nominee has been appointed, the Credit Union may pay a sum representing the value of the member's share or interest to the [Registrar of the Supreme Court / High Court].

(3) If the value of the share or interest does not exceed one 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 appears to have the care of the member or the management of the member's affairs.

(4) All transfers and payments made by the Credit Union in accordance with this section shall be valid and effective against any demand made upon the Credit Union by any person.

(5) For the purposes of this section and section 77, 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 bylaws of the Credit Union otherwise provide.

(6) Where the beneficiary's group insurance has accrued on such share or interest, the value of such benefits shall be the amount actually received by the Credit Union on the account of such deceased member.

76. Transfer of share or interest on death of member

(1) On the death of a member of the Credit Union, where a person has been nominated by the member in accordance with section 78 and the nominee is admitted to membership of the Credit Union, the Credit Union shall within one year of the death of the member by whom the nomination was made, transfer the shares or interest of such deceased member to the nominee.

(2) On the death of a member of the Credit Union, where a person has been nominated by the member in accordance with section 78 has not been admitted to membership of the Credit Union or where the deceased member made no such nomination, the Credit Union shall within one year of the death of the member pay either to the nominee or to the legal personal representative of the deceased member, such sum as represents the value or part thereof of the deceased member's share or interest in the 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) Where after a period of one year there is no nominee or legal personal representative of the deceased member to which the shares or interest may be transferred or to which a sum representing the value or part thereof of the deceased member's share or interest may be paid, the share or interest shall be transferred to the development fund of the Credit Union.

(5) The shares or interest transferred under subsection (4) shall remain in the development fund for a period not less than seven years during which period it shall remain available to bona fide claimants, after which it shall constitute a part of the reserves of the Credit Union.

77. Conditions for the validity of transfer of shares

(1) Shares or interest or any part thereof in the capital of the Credit Union shall not be transferred unless the transfer is made to a member thereof or to a person whose application for membership has been accepted.

(2) Subject to the bylaws, a transfer of shares in the Credit Union is not valid for any purpose unless—

(a) a written application for membership by the transferee is approved and the transfer is authorised by—

(i) a resolution of the directors; or

(ii) a person authorised by a resolution of the directors to approve applications and transfers of that kind; and

(b) notification of any approval given under paragraph (a) is sent to the transferee and his or her name has been entered on the register of members.

(3) Notwithstanding subsection (1), a transfer of a share is valid for the purpose of providing evidence of the rights of the parties to the transfer between the transferor and the transferee.

78. Power of nomination

(1) A member of the Credit Union may nominate a person or persons to or among whom there shall be transferred at his or her death such property in the Credit Union of which he or she is the owner at the time of his or her death, or as may subsequently have accrued thereon, whether

in shares, loans or deposits, or so much thereof as is specified in such nomination if the nomination does not comprise the whole.

(2) A nomination under subsection (1) shall be made by instrument in writing signed by the member in the presence of two attesting witnesses and either delivered at or sent to the registered office of the Credit Union during the lifetime of such member or made in any book kept at the Credit Union's registered office.

(3) A member of the Credit Union may nominate more than one person only if he or she holds more than one share.

(4) A nomination made under subsection (1) may be revoked or varied by a subsequent nomination, or by a similar document in the nature of a revocation or variation, signed, attested and delivered, and sent or made in accordance with subsection (1), but any such nomination may not be revoked or varied by the will of the nominator or by a codicil thereto.

(5) All nominations and all revocations or variations received by the Credit Union shall be maintained in a separate record kept at the registered office of the Credit Union.

PART 5

PROPERTY AND FUNDS

79. Investment of funds

(1) The Board shall establish written policies for investing for income the accumulated funds of the Credit Union not used in the primary business of the Credit Union, and shall ensure they are in compliance with legislative requirements.

(2) Subject to subsections (3) and (4), the funds of the Credit Union including the reserve may be invested or deposited in—

(a) any central finance facility, deposit guarantee or stabilisation fund for Credit Unions, or other Credit Union registered under this Act;

(b) shares or deposits in, loans to, or on the security of, any Credit Union with limited liability;

(c) any financial institution licensed under the Banking and Deposit Companies Act (1999) and any company registered under the Insurance Act 1978; Check on dates for Bermuda

(d) any stock, debentures, funds or securities issued by the Government;

(e) securities, the payment of interest on which is guaranteed by the Government;

(f) real property but subject to the provision of section 102; and

(i) any other manner permitted by the Authority.

(3) The investments referred to in subsection (2) (d), (e), (f)), (g) and (i) shall not exceed in aggregate ten per cent of the unimpaired capital of the Credit Union or.

(4) The equity investment of the Credit Union in any single entity shall be limited to twenty percent of the equity investment of that entity.

(5) The Credit Union shall not invest the funds referred to in subsection (2) in a single institution or instrument.

80. Loan by Credit Union

(1) The Board of the Credit Union shall establish written policies for the consideration, approval, administration and recovery of loans, guarantees, advances and other forms of financial assistance as a primary service to its members.

(2) Except for a loan to another Credit Union, a loan shall not be made by the Credit Union mentioned in subsection (1) to a person who is not a member of that Credit Union.

(3) A loan shall not be made by the Credit Union to a director, committee member, or employee of the Credit Union of a sum in excess of the aggregate value of his or her shares, deposits and accumulated dividend and interest thereon unless adequate security is provided for the amount of the loan in excess of that value. This includes the use of Promissory Notes.

(4) A loan shall not be made to a director, committee member or employee referred to in subsection (3) on any terms relating to interest rates, discounts or waivers or on any other terms more favourable than those offered to the general membership. The Board of Directors may however approve a Staff Loan Scheme which shall at no time exceed 5% of the Credit Union's loan portfolio in aggregate.

(5) A loan shall not be made to a director, committee member or employee referred to in subsection (3), if, when combined with all other outstanding loans to persons referred to in subsection (3), the persons' business interest or the persons' immediate family, it exceeds twenty per cent of the Credit Union's net worth.

(6) Unless with the prior approval of the Authority, a loan shall not be made by the Credit Union to a single member or a group of related members if the loan would cause the aggregate amount of loans to the member or the group of related members to exceed ten per cent of institutional capital or 2% of aggregate withdrawable savings whichever is less.

(7) In accordance with sections 54 and 55, a director, committee member or employee of the Credit Union shall declare his or her interest in a loan at a meeting in which the loan is to be discussed and shall not be present or be present at or participate in a meeting when his or her application for a loan is being considered.

(8) Any loan made in contravention of this section shall be void and shall be repaid to the Credit Union immediately.

(9) Subject to the other provisions of this section, the bylaws of the Credit Union shall provide for other limits in respect of the approval, distribution and collection of any type of loans.

81. Prohibited loans

Subject to this Act, the Credit Union shall not, directly or indirectly, give a loan, guarantee or other means of financial assistance—

(a) to a member, director, officer, committee member or employee of the Credit Union or an associate of any such person for any purpose; or

(b) to any person for the purpose of or in connection with, the acquisition of membership of the Credit Union or the purchase of a share issued or to be issued by the Credit Union or member,

where there are reasonable grounds to believe that the Credit Union is insolvent or would, after giving the financial assistance, be insolvent.

82. Receipt of and maximum liability on loans and deposits

(1) Subject to the provisions of any bylaws of the Credit Union made for the purpose, the Credit Union may receive loans, grants and donated capital from persons or institutions that are not members of the Credit Union for the purpose of meeting any of its obligations or discharging any of its functions under this Act.

(2) The Credit Union may by mortgage or in any other manner it deems appropriate, guarantee the repayment of any sums received by it under subsection (1).

(3) Deposits shall be accepted in the manner and form and subject to any conditions that may be prescribed in subsections 4 and 5 and the Regulations.

(4) A society shall at its annual general meeting set the maximum liability it may incur in respect of loans and deposits from members or non-members.

(5) The total amount borrowed by the Credit Union shall not exceed the aggregate of four times its retained earnings and its reserves.

83. Loan loss provisions

At least quarterly, the Credit Union shall evaluate the quality and collectability of the loan portfolio and establish adequate loan loss allowance in accordance with the standards prescribed by PEARLS-M.

84. Loan approval

(1) A loan made by the Credit Union shall be approved in accordance with the policies established by the directors before any funds are advanced.

(2) A loan to a director, officer, committee member or an employee of the Credit Union or an associate of any of them, shall be approved in the manner prescribed.

(3) A person who knowingly approves or grants a loan by the Credit Union in contravention of this Act or the Regulations shall be held liable for any losses resulting to the Credit Union in connection with that loan.

85. Security for loans

(1) Subject to any restrictions that may be prescribed in the Regulations, the Credit Union may take any security for loans and other risk assets that it considers advisable and in keeping with sound business and risk management practices.

(2) For the purposes of this section, “risk assets” means loans, investments and other property of the Credit Union with possible loss results, which form the basis of determining the amount of the Credit Union’s income to be set aside as provision for loss.

86. Loan limits

The limits on the size and amount of loans made by the Credit Union shall be in accordance with section 80.

87. Reporting loans

(1) Where the Credit Union is reporting loans, it shall report the loans at their fair value deducting provision for loan impairment on the balance sheet in its annual financial statements under section 80.

(2) Any advance given by way of overdraft or line of credit is deemed to be a loan for the purposes of the balance sheet and shall be reported as a loan.

88. Interest on loans

(1) The maximum intervals at which interest on loans made by the Credit Union are to be paid may be prescribed in the Regulations.

(2) The rate of interest to be charged on loans shall be fixed from time to time by the Board.

(3) Where a borrower has not paid the interest on a loan for a period determined in the Regulations, the Credit Union shall not include that interest in income.

89. Receipt of deposits from minors

(1) The Credit Union may receive deposits from a minor and pay to such minor such deposit together with the interest accrued thereon.

(2) Any deposit made on behalf of a minor may, together with any interest accrued thereon, be paid to the parent of the minor or, where the minor is under the care of a guardian, to such guardian for the use of the minor.

(3) The receipt of a minor or his or her parent or guardian for money received under this section shall be a good and sufficient discharge of the liability of the Credit Union in respect of that money.

(4) Where a person under a legal disability, other than minority, is entitled to receive money from the Credit Union such money may be paid by the Credit Union to the [Registrar of the Supreme Court] to the credit of such person under such disability, and the receipt of the [Registrar of the Supreme Court] or of the person under disability shall be good and sufficient discharge of the liability of the Credit Union to pay that money.

(5) The [Registrar of the Supreme Court] may retain out of any money so paid to him or her a sum not exceeding one per cent thereof for fees consistent with Bermuda Law and shall pay or apply the remainder to or for the care, maintenance, education or benefit of the person under disability.

90. Allocation of surplus

(1) Where the Credit Union realises a surplus in a financial year before it allocates among or credits to members the surplus, the directors—

(a) shall use any part of the surplus that the Credit Union will require to refund all or any part of a deficit it has previously incurred;

(b) shall establish and maintain a reserve to be known as its statutory reserves; and

(c) may provide, out of any surplus remaining after paragraphs (a) and (b) have been complied with and in the manner set out in its bylaws for payment out of the surplus, dividends on members’ equity shares.

(2) The statutory reserves required by subsection (1)(b) shall be part of the institutional capital of the Credit Union and may, subject to the approval of the Authority, be used in the business of the Credit Union, including unforeseen losses, unexpected shortfalls in liquid cash, capital retention, repayment of shares to members leaving the Credit Union, improved earnings, financing of non-earning assets, repair and maintenance and the avoidance of external borrowing.

(3) The Credit Union shall ensure that its statutory reserves and other institutional capital reserves are, at no stage, less than ten per cent of its total assets.

(4) If at the end of any financial year the amount standing to the institutional capital before any transfer under this section is less than ten per cent of total assets, the Credit Union shall transfer

to statutory reserves for that year twenty-five per cent of its surplus or such lesser sum as may be required to increase the institutional capital to ten per cent of total assets.

(5) Where at the end of any financial year the amount standing to statutory reserves and other institutional capital before any transfer under this section is more than ten per cent of total assets, the Credit Union may not make any transfer to statutory reserves

(6) The Annual General Meeting consistent with the Credit Unions Act shall grant such period of time as the Annual General Meeting consistent with the Credit Unions Act considers reasonable to enable management to make good any deficiency in the adequacy of its capital base.

91. Relief & Development funds

(1) The Credit Union shall establish and maintain development and relief funds, which may include any existing education fund, educational reserve or special reserve to be used to assist (a) co-operatives that might experience natural disaster or financial distress due to circumstances that are proven to be beyond the control of the co-operative in distress and (b) for strengthening the capacity and growth of the Credit Union and for human resource development among its members, volunteers and employees.

(2) The Credit Union that realises a surplus from its operations as ascertained by the annual audit shall make such annual contribution to its development fund not exceeding 10% of that surplus.

(3) The Relief and Development funds shall be administered by such person or body of persons as the board may determine, with the approval of the Annual General Meeting.

92. Pension fund

(1) The Credit Union may establish a contributory pension fund for its servants and employees and may contribute to such fund.

(2) A pension fund established under subsection (1) shall not be considered part of the assets of the Credit Union but may be invested in such manner as may be prescribed by the bylaws.

93. Charitable contributions

After making the prescribed payments to its statutory reserve and development fund the Credit Union may contribute to any non-profit, charitable, benevolent, community, co-operative or cultural improvement purpose.

94. Dividend or bonus

(1) Subject to this section and sections 84 and 85, any surplus may be distributed by way of dividend or bonus amongst its members in proportion to their business with the Credit Union at such rate as may be prescribed.

(2) The Credit Union shall not—

(a) declare or pay a dividend or bonus or distribute any part of its accumulated funds before the financial statements have been certified by a qualified auditor;

(b) pay a dividend or make any payment on account out of profits until its institutional capital has reached a proportion of not less than ten per cent of the total assets of the Credit Union; or

(c) declare or pay a dividend from unrealised gains including stock grants or share grants or gains arising from asset revaluation.

(3) A bonus based on wages or on the value of the products of a member or a bonus or patronage rebate calculated in proportion to the amount of the business done by each member with the Credit Union may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after and making allocation to the statutory reserves.

95. Liquid assets

(1) The Credit Union shall at all times keep such a proportion of its total assets in liquid form as will enable the Credit Union to meet its liabilities as they arise.

(2) For the purpose of complying with subsection (1), the Credit Union shall ensure that no less than fifteen per cent of its members' unencumbered deposits and other short term liabilities are maintained in a liquidity fund; but nothing in this Act shall be taken to prevent the Credit Union keeping liquid assets in addition to those required for complying with subsection (1).

(3) Subject to section 90(1)(b), the Credit Union shall not capitalise its statutory reserves by way of bonus shares or distribute it by way of dividends.

(4) Despite the provisions of section 90(1)(b), whenever the board of the Credit Union so recommends to the members and a majority of the members present and voting at a general meeting by resolution so approve

(a) the allocation to its statutory reserves may be increased; or

(b) if its statutory reserves at the end of the financial year in question equals or exceeds ten per cent of assets, the allocation may be reduced.

96. Acceptance of deposits

(1) Subject to sections 82 and 89, the Credit Union may accept deposits from-

(a) members;

(b) other Credit Unions;

(d) government and non-government agencies; and

(e) bodies corporate.

(2) Deposits may be accepted in the manner and form and on any condition that may be prescribed in the Regulations.

97. Credit Unions and trusts

(1) The Credit Union is not bound to see to the execution of any trust, whether express, implied or constructive, to which any deposit or share is subject.

(2) Where any deposit or share is subject to a trust of which the Credit Union has notice, the receipt or order-

(a) of the trustee in whose name the deposit or share stands, or

(b) if the deposit or share stands in the names of two or more trustees, all those trustees or any of them who, under the document creating the trust, may be entitled to receive the deposit or share,

is, notwithstanding any trust to which the depositor share is subject, a sufficient discharge to the Credit Union for the payment of any money payable in respect of the deposit or share, and the Credit Union is not bound to see to the application of any money paid on the receipt or order.

(3) Notwithstanding any neglect or omission on the part of the Credit Union to enter a proper description in its books, an executor, an administrator, a guardian, a committee or a trustee who is entered on the books of the Credit Union as a member, or who is described as representing a named estate, trust or trust beneficiary in such capacity shall not be personally liable to the Credit Union with respect to the share that he or she represents.

(4) The estate or trust beneficiary represented by a person described in subsection (3) continues to be liable to the Credit Union in the same manner and to the same extent as if the testator, minor, ward, person of unsound mind, beneficial trust or their trust beneficiary were entered on the records of the Credit Union as the holder of the shares.

PART 6

Restrictions

98. Reserve Funding Requirements

(1) The Credit Union shall maintain a statutory reserve and other institutional capital equivalent to not less than 10% of its total assets.

(2) At the close of each financial year, no less than 25% of the Credit Union's net profits shall be placed into a reserve fund until such time as the institutional capital is equal to 10% of the Credit Union's total assets.

(3) A reserve fund shall not be distributed to members unless the Credit Union is dissolved.

99. Liquidity Requirements

(1) The Credit Union shall maintain a minimum liquidity ratio of 15% of withdrawable savings in cash or highly liquid assets.

100. Maximum Lending and Borrowing Requirements

(1) The maximum period for which the Credit Union can lend to any member is ten years;

(2) The Credit Union shall not lend more than 10% of its Institutional Capital to any individual member or 2% of aggregate withdrawable shares whichever is less;

(3) The total loan portfolio of the Credit Union should not normally exceed 80% of its total assets;

(4) The Credit Union shall not borrow an amount exceeding 10% of its total assets or four times its retained earnings and reserves.

101. Insurance

- (1) The Credit Union shall not underwrite insurance or the issue of securities by another person.
(2) Nothing in subsection (1) shall prevent the Credit Union from acquiring insurance for the security and growth of the Credit Union and the improved livelihood of its members.

102. Real Property

- (1) The Credit Union shall not demand from a potential borrower that—
(a) any additional services, including appraisal valuations or security, be obtained from a specific provider; or
(b) the borrower should utilise any other services of the Credit Union, as a condition of, or in consideration of, obtaining a loan.
- (2) Subject to subsection (3), the Credit Union may only hold real property, the aggregate market value of which does not exceed 10% of its total assets.
- (3) Notwithstanding subsection (2), the Annual General Meeting consistent with the Credit Unions Act may, if satisfied that the circumstances require it, grant approval to the Credit Union to hold real property in excess of the percentage specified in subsection (2).
- (4) Subsection (3) shall not apply where the Credit Union exercises its legal right in respect of any property which is the security for any debt, and in such a case, the property shall not be retained for a period in excess of five years without the permission of the Annual General Meeting consistent with the Credit Unions Act unless in the meantime the aggregate value of the real property held by the Credit Union is reduced to below the percentage specified in subsection (2).
- (5) Nothing in subsection (2) shall be interpreted as requiring the Credit Union—
(a) to dispose of any real property that was acquired before the coming into force of this Act; or
(b) to terminate any agreement to acquire or hold any real property where the agreement was entered into before the coming into force of this Act.

103. General

Without prejudice to the generality of the foregoing restrictions, the Credit Union may, with the permission of the Authority, do all other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

PART 7

Financial Statements, Audit and Disclosure

104. Appointment of auditors

- (1) At each annual meeting, the Credit Union shall appoint an approved auditor for the Credit Union.
- (2) If the Credit Union fails to appoint an approved auditor under subsection (1) or, at any time, fails to fill a vacancy for such auditor, the Annual General Meeting consistent with the Credit Unions Act may appoint an approved auditor and shall fix the remuneration to be paid by the Credit Union to such auditor.
- (3) The Credit Union shall forthwith give written notice to the Authority:
(a) proposes to remove an auditor before the expiration of his term of office; or
(b) proposes to replace an auditor at the expiration of the term of his office with a different auditor.
- (4) An auditor of the Credit Union shall forthwith give written notice to the Authority if the auditor
(a) resigns before the expiration of his term of office;
(b) does not seek to be re-appointed;
(c) decides to include a modification of his report on the Credit Union's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion; or
(d) becomes aware of any fact or matter which is likely to be of material significance for the discharge, in relation to the Credit Union, of the Authority's functions under this Act.
- (5) An Credit Union or auditor that fails to comply with subsections (1), (3) or (4)(a), (b) or (c)

commits an offence and is liable on summary conviction to a fine consistent with the Credit Unions Act and Bermuda Law .

(6) No person having an interest in the Credit Union and no member, officer, servant or agent of the Credit Union shall be eligible for appointment as an approved auditor for the Credit Union and any person appointed as an auditor who subsequently acquires an interest in the Credit Union or becomes an officer, servant or agent of that Credit Union shall cease to be an approved auditor.

105. Duty to prepare unaudited and annual audited accounts

(1) The Credit Union shall cause unaudited financial statements to be prepared and shall provide copies of them to the Board of Directors no later than 30 days after the end of each quarter.

(2) The Credit Union shall cause annual audited financial statements or accounts to be prepared in respect of all transactions and balances relating to the Credit Union's business.

(3) The Credit Union shall provide the Authority a copy of the audited financial statements no later than four months after the close of the Credit Union's financial year.

(4) Both the audited and unaudited financial statements must include a balance sheet, income statement and statement of cash flows and are to be prepared in accordance with one of the following standards or principles—

(a) International Financial Reporting Standards ("IFRS");

(b) generally accepted accounting principles ("GAAP") that apply in Bermuda, Canada, the United Kingdom or the United States of America; or

(c) such other GAAP as the Authority may recognise.

(5) The Credit Union shall, at each of its offices in Bermuda—

(a) keep a copy of its most recent audited financial statements together with the auditor's report on the financial statements;

(b) post the copy of the financial statements and report in its offices and make them available for inspection by any person, on request, during normal business hours.

(6) The Credit Union that fails to ensure preparation of annual financial statements or which fails to cause the financial statements to be audited annually as required by this section is guilty of an offence and is liable on summary conviction to a fine consistent with the Credit Unions Act 2010 and Bermuda Law.

106. Auditor to communicate certain matters to the Authority

(1) The auditor of the Credit Union shall give written notice to the Authority of the following matters as soon as they arise —

(a) the auditor's resignation, if he resigns before the expiration of his term of office;

(b) the auditor's intention not to seek to be re-appointed;

(c) a decision to include a modification of the auditor's report on the Credit Union's financial statements and in particular, a qualification or denial of his opinion, or the statement of an adverse opinion.

(2) An auditor shall forthwith give written notice to the Authority any fact or matter of which he becomes aware which is likely to be of material significance for the discharge, in relation to the Credit Union of which he is an auditor, of the Authority's functions under this Act.

(3) An auditor who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine consistent with the Credit Unions Act 2010 and Bermuda Law.

(4) No duty to which an auditor of the Credit Union may be subject shall be regarded as contravened by reason only of his communicating in good faith to the Authority, whether or not in response to a request made by the Authority, any information or opinion on a matter to which this section applies and which is relevant to any function of the Authority.

107. Annual returns

(1) The Credit Union shall deliver to the Authority, signed by the chief executive officer or secretary of the Credit Union, made up to 31 December of each year.

(2) Each return shall contain:

(a) the name and address of every director, chief executive officer or senior executive officer of the Credit Union on the date at which the return was made up; or

(b) the name and address of every person who has ceased to be a director, chief executive officer or senior executive officer of the Credit Union since the date to which the last return was made up or, in the case of a first return, since the registration of the Credit Union;

(c) a report showing the actual performance of the Credit Union in respect of its

compliance with the Credit Unions Act 2010 and the quantitative and qualitative targets set in its annual work plan and budget.

(2) If the Credit Union fails to deliver an annual return in accordance with this section before the end of the period of 28 days after the return date, the Credit Union is guilty of an offence and liable on summary conviction to a fine of \$10,000 and in the case of a continued offence to a daily default fine of \$1,000.

108. Credit Union required to notify the Authority of certain matters

(1) The Credit Union shall notify the Authority the following:

- (a) failure of the Credit Union to meet a prudential requirement in sections 98 to 100 or a minimum performance criterion;
- (b) actual or suspected fraud in relation to the business of the Credit Union;
- (c) new business initiatives or any other material change to its business;
- (d) the fact that any person has become or ceased to be a director, chief executive officer or senior executive officer of the Credit Union;
- (e) any matter that may have a significant impact on its operations.

(2) A notice required to be given under subsection (1) shall be given before the end of the period of 14 days beginning with the day on which the Credit Union becomes aware of the relevant facts.

(3) The Credit Union which fails to give a notice required by this section is guilty of an offence and liable on summary conviction to a fine of \$50,000.

PART 8

RECONSTRUCTION OF CREDIT UNIONS

109. Methods of reconstruction

(1) The reconstruction of the Credit Union is subject to the approval of the Annual General Meeting consistent with the Credit Unions Act and may be effected by—

- (a) the amalgamation of one Credit Union with another Credit Union to form a single Credit Union;
- (b) the transfer of the assets and liabilities of one Credit Union to another Credit Union;

or

- (c) the division of the Credit Union into two or more Credit Unions.

(2) Sections 112 to 115 shall have effect with respect to the procedure that shall be followed in relation to subsection (1).

110. Conversion

(1) A company registered under the Companies Act [1981] or a registered industrial, provident or friendly society may, by special resolution, determine to convert itself into the Credit Union.

(2) A special resolution for conversion into the Credit Union under subsection (1) shall appoint ten members of the company or the industrial, provident or friendly society who together with the secretary, shall sign the proposed bylaws and who may, by resolution, be given such powers to act on behalf of the company or the industrial, provident or friendly society as may be specified in such resolution.

(3) A copy of the special resolution referred to in subsection (1) with three copies of the bylaws shall be sent to the Authority who may, upon receipt thereof, register the Credit Union and issue a certificate in accordance with the Credit Unions Act 2010.

111. Effect of certificate of registration

(1) On the date of the certificate of registration issued under section 110—

- (a) the incorporation or registration under any other enactment of the company or the industrial, provident or friendly society shall cease and shall be cancelled by the proper officer;
- (b) the conversion of the company or the industrial, provident or friendly society shall be effective;
- (c) the property of the company or the industrial, provident or friendly society shall become the property of the Credit Union;

- (d) the Credit Union shall be liable for the obligations of the company or the industrial, provident or friendly society;
- (e) an existing cause of action, claim or liability or prosecution against the company or the industrial, provident or friendly society shall not be affected;
- (f) a civil, criminal or administrative action pending against a converted company or an industrial, provident or friendly society may be continued against the registered Credit Union; and
- (g) a conviction against or a ruling, order or judgment in favour of or against a company or an industrial, provident or friendly society may be enforced by or against the registered Credit Union.

(2) An obligation or penalty arising under any of the matters mentioned in subsection (1) for which the former company, or industrial, provident or friendly society is liable or potentially liable at the date of the certificate of registration issued under section 133 shall have priority as against the property of the registered Credit Union over all other rights or claims against, or liabilities of the registered Credit Union.

112. Amalgamation of Credit Unions

(1) Any two or more Credit Unions may, by a resolution passed by not less than three-fourths of all the members of each Credit Union present and voting at a special general meeting called for the purpose, amalgamate as one Credit Union.

(2) Where a resolution referred to in subsection (1) is passed, the Credit Union shall apply to the Authority for cancellation of its registration and the Credit Unions shall jointly make application for the registration of the amalgamated Credit Union.

(3) The registration of the amalgamated Credit Union shall be sufficient to vest the assets and liabilities of the amalgamating Credit Unions in the amalgamated Credit Union.

113. Transfer of assets of Credit Unions

(1) Any Credit Union may, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for the purpose, agree to transfer its assets and liabilities to any other Credit Union which has agreed to accept them.

(2) The acceptance of that other Credit Union shall be by a resolution passed by not less than three-fourths of the members of that other Credit Union present and voting at a special general meeting called for the purpose.

(3) On the passing of the resolutions referred to in subsections (1) and (2), the transferor Credit Union shall apply to the Authority for cancellation of its registration and the transferee Credit Union shall submit to the Authority a copy of the transferee Credit Union's resolution agreeing to the transfer.

(4) Subject to subsection (5), the cancellation of registration and the submission of the resolution agreeing to accept the transfer shall be sufficient to vest the assets and liabilities of the transferor to the transferee.

(5) Where the vesting of the assets of the Credit Union involves real estate, a copy of the resolution referred to in subsection (1), certified as such by the Authority, the resolution shall be recorded at the Land Registry.

114. Claims of objecting creditors

Notwithstanding sections 111 and 112 an amalgamation or transfer shall not be effected unless the creditors of the Credit Unions concerned are given three months' written notice of the proposal and have signified that they have no objections.

115. Division of Credit Union

(1) The Credit Union may, by resolution in this section referred to as a "preliminary resolution" passed by three-fourths of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more Credit Unions.

(2) A preliminary resolution—

(a) shall contain proposals for the division of the assets and liabilities of the Credit Union among the new Credit Unions into which it is proposed to divide the Credit Union; and

(b) may specify the area of operation of, and the members who will constitute, each of the new Credit Unions.

(3) A copy of the preliminary resolution shall be sent to the Authority and all members and creditors of the Credit Union that is being divided.

(4) At least ten days notice of the preliminary resolution shall be given to any person whose interest will be affected by the division of the Credit Union, and by publishing the notice in the Gazette and in at least two issues of a newspaper published and circulated in Bermuda.

(5) A member of the Credit Union may, notwithstanding any bye-law to the contrary, by notice given to the Credit Union within a period of three months from his or her receipt of the preliminary resolution, state his or her intention not to become a member of any of the new Credit Unions.

(6) A creditor of the Credit Union may, notwithstanding any agreement to the contrary, by notice given to the Credit Union within a period of three months from his or her receipt of the preliminary resolution, state his or her intention to demand the payment of moneys due him or her.

(7) Any person, other than a member or creditor, whose interest may be affected by the division of the Credit Union may, by notice given to the Credit Union, object to the division unless his or her claim is satisfied.

(8) After the expiry of three months from the receipt of the preliminary resolution by all the members and creditors of the Credit Union and of the notice to other person given under subsection (4), another special general meeting of the Credit Union, of which at least fifteen days notice shall be given to its members, shall be convened for the consideration of the preliminary resolution.

(9) If at the special general meeting referred to in subsection (8) the preliminary resolution is confirmed by a special resolution either without changes or with such changes as in the opinion of the Authority are not material, the Authority may, subject to subsection (11) and section 16, register the new Credit Unions; and upon registration, the original Credit Union shall be taken to be dissolved and its registration cancelled.

(10) The decision of the Authority as to whether any changes made in the preliminary resolution are material shall be final and not subject to any appeal.

(11) At the special general meeting referred to in subsections (8) and (9) provision shall be made by another resolution for

(a) repayment of the share capital of all the members who have given notice under subsection (5);

(b) satisfaction of the claims of all the creditors who have given notice under subsection (6); and

(c) satisfaction of the claims of such of the other persons, who have given notice under subsection (7),

but no member or creditor or other person shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed in accordance with subsection (9).

(12) Where within such time as the Authority considers reasonable-

(a) the share capital of the members referred to in subsection (11)(a) is not repaid;

(b) the claims of the creditors referred to in that subsection are not satisfied; or

(c) the claims of the other persons mentioned in subsection (11)(c) are not satisfied or secured, the Authority may refuse to register the new Credit Unions.

116. Effect of registration of new Credit Unions

The registration of new Credit Unions established under section 138 is sufficient to vest the assets and liabilities of the original Credit Union in the manner specified in the preliminary resolution as confirmed in accordance with section 138(8) and (9).

PART 9

WINDING UP PROCEEDINGS

117. Directions to protect interests of members

(1) The Authority may give directions to the Credit Union under this section at any time after its certificate of continuance is revoked or surrendered.

2) Directions under this section shall be such as appears to the Authority to be desirable for safeguarding the interests of the Credit Union's members.

(3) No direction shall be given to the Credit Union under this section after it has ceased to have any liability in respect of deposits for which it had a liability at a time when it was licensed to operate; and any such direction which is in force with respect to the Credit Union shall cease to have effect when the Credit Union ceases to have any such liability.

(4) The Credit Union which fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section is guilty of an offence and liable

(a) on summary conviction to a fine of \$25,000;

(b) on conviction on indictment to a fine of \$75,000.

118. Notification and confirmation of directions

(1) A direction under section 117 shall be given by notice in writing and may be varied by a further direction; and a direction may be revoked by the Authority by a notice in writing to the Credit Union concerned.

(2) A direction under section 117, except one varying a previous direction with the agreement of the Credit Union concerned

(a) shall state the reasons for which it is given and give particulars of the Credit Union's rights under subsection (3) and section 143; and

(b) without prejudice to section 140(3) shall cease to have effect at the end of the period of 28 days beginning with the day on which it is given unless before the end of that period it is confirmed by a further written notice given by the Authority to the Credit Union concerned.

(3) The Credit Union to which a direction is given which requires confirmation under subsection (2) may, within the period of 14 days beginning with the day on which the direction is given, make written representations to the Authority; and the Authority shall take any such representations into account in deciding whether to confirm the direction.

119. Winding up on petition from the Authority

(1) On a petition presented by the Authority by virtue of this section, the Supreme Court may wind up the Credit Union in respect of which a licence is revoked, if the court is of the opinion that it is just and equitable that the Credit Union be wound up.

(2) Part XIII (Winding Up) of the Companies Act 1981 shall apply to the winding up of the Credit Union under this section.

120. Notice of restriction or revocation of certificate of continuance

(1) Where the Authority proposes to

(a) restrict continuance under section 117(1);

(b) vary a restriction imposed on a certificate of continuance otherwise than with the agreement of the Credit Union concerned; or

(c) revoke a certificate of continuance consistent with the Credit Unions Act 2010,

the Authority shall give to the Credit Union concerned written notice of its intention to do so.

(2) If the proposed action is within subsection 1(a) or 1(b), the notice under that subsection shall specify the proposed restriction or, as the case may be, the proposed variation.

(3) A notice under subsection (1) shall state the ground or grounds on which the Authority intends to act and give particulars of the Credit Union's rights under subsection (5).

(4) Where

(a) the ground for a proposal to impose or vary a restriction or for a proposed revocation is that it appears to the Authority that the criterion in paragraph 1 of Schedule 2 is not or has not been fulfilled, or may not be or may not have been fulfilled, in the case of any person; or

(b) a proposed restriction consists of or includes a condition requiring the removal of any person as a director, chief executive officer or senior executive officer,

the Authority shall give that person a copy of the notice mentioned in subsection (1), together

with a statement of his rights under subsection (5).

(5) The Credit Union which is given notice under subsection (1) and a person who is given a copy of it under subsection (4) may make representations in writing to the Authority within the period of 14 days beginning with the day on which the notice was given (or such other longer period as the Authority may allow).

(6) After taking into account any representations made under subsection (5), the Authority shall decide whether

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action;
- (c) if the proposed action was to revoke the Credit Union's certificate of continuance, to restrict its licence instead; or
- (d) if the proposed action was to restrict the Credit Union's licence or to vary the restrictions on a certificate of continuance, to restrict it or to vary the restrictions in a different manner.

(7) The Authority shall give the Credit Union and any person mentioned in subsection (4), written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by subsection (9) and section 124.

(8) A notice under subsection (7) of a decision to restrict a licence, to vary the restrictions on a licence or to revoke a licence shall, subject to section 17 of the Credit Unions Act 2010, have the effect of restricting the licence or varying the restriction in the manner specified in the notice or of revoking the certificate of continuance.

(9) Where the decision notified under subsection (7) is to restrict the certificate of continuance or to vary the restrictions on a certificate of continuance otherwise than as stated in the notice given under subsection (1), the Credit Union may within the period of seven days beginning with the day on which the notice was given under subsection (7) make written representations to the Authority may, after taking those representations into account, alter the restrictions.

(10) A notice under subsection (7) shall be given within the period of 28 days beginning with the day on which the notice under subsection (1) was given; and if no notice under subsection (7) is given within that period, the Authority shall be treated as having at the end of that period given a notice under that subsection to the effect that no further action is to be taken.

(11) Where the Authority varies a restriction on the Credit Union's certificate of continuance with its agreement or withdraws a restriction consisting of a condition, the variation or withdrawal shall be effected by written notice to the Credit Union.

(12) The Authority may omit from the copy given to a person under subsection (4) and from a notice given to him under subsection (7) any matter which does not relate to him.

(13) The Authority shall publish in the Gazette, in such form as he or she thinks fit, notice of every revocation of a licence under this Act.

121. Surrender of certificate of continuance

21 (1) The Credit Union may surrender its certificate of continuance by written notice to the Authority.

(2) A surrender shall take effect on the giving of the notice or, if a later date is specified in it, on that date; and where a later date is specified in the notice the Credit Union may by further written notice to the Authority substitute an earlier date, not being earlier than that on which the first notice was given.

(3) The surrender of a certificate of continuance is irrevocable unless it is expressed to take effect at a later date and before that date the Authority by notice in writing allows it to be withdrawn.

PART 10

FEES AND DELEGATION OF POWERS

122. Delegation of the Authority to Supervise Credit Unions

(1) The Minister may consistent with the Credit Unions Act 2010, by order, delegate to the Chief Executive Officer of the Bermuda Monetary or to a suitably qualified public servant in the Ministry of Finance the exercise of any monitoring or supervisory power or the performance of any monitoring or supervisory power and duty vested in him or her by this Act.

(2) A delegation made under this section may be-

(a) made subject to such conditions, qualifications and exceptions as may be prescribed in the order;

(b) revoked or varied by a subsequent order made in the like manner.

(3) The Minister may exercise a power or perform a duty notwithstanding that he or she has delegated the exercise or performance to an assign.

123. Supervision fees

(1) The Credit Union shall pay such fees for registration, renewal of certificate of continuance and general supervision as may be prescribed under the Regulations to this Act, and thereafter shall pay the supervision fee in each calendar year in accordance with the Credit Unions Act 2010.

(2) The supervision fee payable shall be calculated in proportion to the actual level of effective examination, monitoring and oversight provided by the Authority and his assigns during the previous year.

(3) The Credit Union that fails to pay a supervision fee required to be paid under subsection (1) is liable to a civil penalty in accordance with the Credit Unions Act 2010.

(4) The Authority may recover a fee or civil penalty payable under this section as a debt owing to it in any court of competent jurisdiction.

PART 11

SETTLEMENT OF DISPUTES

124. Rights of appeal

(1) The Credit Union which is aggrieved by a decision of the Authority

(a) to restrict its certificate of continuance, to restrict it in a particular manner or to vary any restrictions of its certificate of continuance,

(b) to revoke its certificate of continuance, or

(c) to otherwise affect its operations, governance or image

may appeal against the decision to a tribunal constituted in accordance with section 22 of the Credit Unions Act 2010

(2) Where

(a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 120(4)(a); or

(b) the effect of a decision within subsection (1)(a) is to require the removal of a person as the chief executive officer or a senior executive officer of the Credit Union,

the person to whom the ground relates or whose removal is required may appeal to a tribunal constituted as aforesaid against the finding that there is such a ground for the decision or, as the case may be, against the decision to require his removal.

(3) The tribunal may suspend the operation of a restriction or a variation of a restriction pending

the determination of an appeal in respect of the decision imposing or varying the restriction.

(4) Sections 32, 33 and 34 of the Banks and Deposit Companies Act 1999 apply in respect of an appeal brought under this section in the same manner as they apply in respect of appeals brought under section 30 of the Banks and Deposit Companies Act 1999. (5) The revocation of the Credit Union's certificate of continuance pursuant to a decision against which there is a right of appeal under this section shall not have effect

- (a) until the end of the period within which the appeal can be brought; and
- (b) if such an appeal is brought, until it is determined or withdrawn.

(6) A judge may consider and determine any question of law so referred and the opinion given on such question shall be final and binding.

125. Appointment of administrator by court

(1) The Supreme Court may apply to the court to make an order under subsection (2) if he or she is satisfied of the matters specified in section 27 of the Credit Unions Act 2010 but he or she considers that in the interests of the members it is not appropriate to revoke the certificate of continuance.

(2) The court may, on the application of the Authority in subsection (1) make an order appointing a person with appropriate experience to manage and administer the business of the Credit Union. See wording in Section 27 of the Credit Unions Act 2010.

(3) An administrator appointed under subsection (2) in managing and administering the business of the Credit Union, shall take such action as will protect the interests of the members of the Credit Union, but shall not take on any new business.

(4) The court may from time to time give such directions to the administrator as it considers appropriate to the performance of his functions under this section.

(5) With effect from the date of appointment of the administrator, every person

- (a) who is a chief executive officer, senior executive officer, or director of the Credit Union shall cease to hold office; and
- (b) the administrator so appointed shall take over and be solely responsible for the management and administration of the Credit Union's business.

(6) An administrator appointed under subsection (2) shall receive such remuneration as the court may determine, which shall be charged to, and payable by, the Credit Union.

PART 12

INVESTIGATIONS

126. Investigations on behalf of the Authority

(1) If it appears to the Authority desirable to do so in the interests of the members or potential members of the Credit Union the Authority may appoint one or more competent persons to investigate and report to the Authority—

- (a) the nature, conduct or state of the Credit Union's business or any particular aspect of it; or
- (b) the ownership or control of the Credit Union;

and the Authority shall give written notice of any such appointment to the Credit Union concerned.

(2) It is the duty of every person who is or was a director, chief executive officer, senior executive officer, employee, agent, banker, auditor or barrister and attorney of the Credit Union which is under investigation, and any person appointed to make a report in respect of that Credit Union under section 33(1)(b) of the Credit Unions Act 2010—

- (a) to produce to the persons appointed under subsection (1), within such time and

at such place as they may require, all documents relating to the Credit Union concerned which are in his custody or power;

- (b) to attend before the persons so appointed at such time and place as they may require; and
- (c) to give those persons any other assistance in connection with the investigation which he is reasonably able to give,

and those persons may take copies of or extracts from any documents produced to them under paragraph (a).

(3) For the purpose of exercising his powers under this section a person appointed under subsection (1) may enter any premises occupied by the Credit Union which is being investigated by him under this section; but he shall not do so without prior notice in writing unless he has reasonable cause to believe that if such a notice were given any documents whose production could be required under this section would be removed, tampered with or destroyed.

(4) A person exercising powers by virtue of an appointment under this section shall, if so required, produce evidence of his authority.

(5) Any person who—

- (a) without reasonable excuse fails to produce any documents which it is his duty to produce under subsection (4) ;
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so;
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to an Credit Union which is under investigation or a company which is being investigated by virtue of subsection (2); or
- (d) intentionally obstructs a person in the exercise of the rights conferred by subsection (5),

is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(6) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(7) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

127. Investigation of suspected contraventions

(1) Where the Authority has reasonable grounds for suspecting that a person has contravened section 36(2) of the Credit Unions Act 2010 the Authority or any duly authorised officer, servant or agent of the Authority may by notice in writing require that person or any other person—

- (a) to provide, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such information as the Authority may reasonably require for the purpose of investigating the suspected contravention;
- (b) to produce, at such place as may be specified in the notice and either forthwith or at such time as may be so specified, such documents, or documents of such description, as may be specified, being documents the production of which may be reasonably required by the Authority;
- (c) to attend at such place and time as may be specified in the notice and answer questions relevant for determining whether such a contravention has occurred.

(2) The Authority or a duly authorised officer, servant or agent of the Authority may take copies of or extracts from any documents produced under this section.

(3) Any officer, servant or agent of the Authority may, on producing if required evidence of his authority, enter any premises occupied by a person on whom a notice has been served under

subsection (1) for the purpose of obtaining there the information or documents required by the notice, putting the questions referred to in paragraph (c) of that subsection or exercising the powers conferred by subsection (2).

(4) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section or intentionally obstructs a person in the exercise of the rights conferred by subsection (3) is guilty of an offence and liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

(5) A statement made by a person in compliance with a requirement imposed by virtue of this section shall not be used in evidence against him.

(6) Nothing in this section shall compel the production by a barrister and attorney of a document containing a privileged communication made by him or to him in that capacity.

128. Powers of entry in cases of suspected contraventions

(1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority that there are reasonable grounds for suspecting that a person has contravened 4 section 36(2) of the Credit Unions Act 2010 and—

- (a) that that person has failed to comply with a notice served on him under that section;
- (b) that there are reasonable grounds for suspecting the completeness of any information provided or documents produced by him in response to such a notice; or
- (c) that there are reasonable grounds for suspecting that if a notice were served on him under that section it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(2) A warrant under this section shall authorise any police officer not below the rank of inspector, together with any other person named in the warrant and any other police officers—

- (a) to enter any premises occupied by the person mentioned in subsection (1) which are specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1)(c) or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
- (c) to take copies of or extracts from any such documents;
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person has contravened section 4.

(3) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.

(4) Any documents of which possession is taken under this section may be retained—

- (a) for a period of three months; or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person for any such contravention as is mentioned in section 19, until the conclusion of those proceedings.

(5) Any person who intentionally obstructs the exercise of any right conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (2)(d) is guilty of an offence and liable—

- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

129. Obstruction of investigations

- (1) A person who knows or suspects that an investigation is being or is likely to be carried out—
- (a) into a suspected contravention of section 36(2) of the Credit Unions Act 2010
- shall not obstruct any person who is carrying out an examination under sections 130 or 131 or obstruct the examination of the Credit Union undertaken under sections 130 or 131.
- (2) A person is guilty of an offence if he or she falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation unless he proves that he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine of \$10,000 or to imprisonment for a term of six months or to both;
- (b) on conviction on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

PART 13

OFFENCES

130. Offences by Directors and Officers

Every offence by the Credit Union under this Act is deemed to have been also committed by every director, chief executive officer or senior officer of the Credit Union who is bound by its bylaws to fulfil the duty whereof such offence is a breach, unless the director or officer is found to have no knowledge of or have attempted to prevent the commission of the offence.

131. Corrupt practices and bribery

(1) A member, agent or employee of the Credit Union shall not accept, agree to accept, obtains or attempt to obtain whether for himself or another, any gift or consideration as an inducement reward for-

- (i) doing or forbearing to do any act relating to the business of the co-operative society; or
- (ii) for showing favour or disfavour to any person in relation to the business of the co-operative society.

(2) A person shall not give, agree to give, or offer such gift or consideration to any member, agent or employee of the Credit Union as inducement or reward for any purpose mentioned in subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable-

- (i) on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months or to both.

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

132. Offences with respect to reports

(1) A person shall not make or assist in making a report, return, notice or other document, required by this Act or the Regulations to be sent to the Authority, that—

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in the case of an individual, to a fine of

- (a) \$10,000 or to imprisonment for a term of six months or to both;
- (b) on indictment, to a fine of \$50,000 or to imprisonment for a term of two years or to both.

(3) A person does not commit an offence under subsection (2) where the untrue statement or omission was unknown to him or her, and in the exercise of reasonable diligence, could not have been known to him or her.

133. Contravention of the Act and Regulations

- (1) A person shall not-
- (a) fail to give any notice or fail to send any return or document that is required for the purpose of this Act; or
 - (b) fail to hold an annual or special general meeting within the stipulated or extended time in conformity with sections 16, 17 and 18.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction-
- (a) in the case of a first offence to a fine consistent with the Credit Unions Act 2010 and Bermuda Law;
 - (b) in the case of a subsequent offence to a fine consistent with the Credit Unions 2010 and Bermuda Law.
- (3) Where a body corporate commits an offence under this Act or the Regulations and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in such capacity,
- he or she, as well as the body corporate, shall commits the offence and be liable to be proceeded against and punished accordingly.
- (3) For the purposes of subsection (2), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

134. Failure to comply with Act

- (1) A person shall not-
- (a) fail without reasonable cause or wilfully neglect or refuse to comply with an requirement of this Act or the Regulations or to provide any information in circumstances for which a penalty is not provided elsewhere in this Act; or
 - (b) purporting to comply with a requirement for information under this Act, provide information which the person knows to be false,
- (2) A person shall not wilfully or without reasonable cause disobey any summons, order or direction lawfully issued under this Act or the Regulations.
- (3) A person shall not knowingly alter, destroy, mutilate, conceal, cover or falsify or makes a false entry in any record or document of or belonging to the Credit Union with intent to impede, disrupt or influence an investigation or the proper administration of any matter.
- (4) An officer or member of the Credit Union shall not wilfully contravene the bye-laws of the Credit Union in relation to his or her duties or functions as such officer or member.
- (5) A person who contravenes subsection (1), (2) (3) or (4) commits an offence and is liable on summary conviction to a fine consistent with the Credit Unions Act 2010 and Bermuda Law.

135. Court order to comply

Where a person is convicted of an offence under this Act or the Regulations, the court may, in addition to any punishment imposed, order the person to comply with the provision of this Act or the Regulations for the contravention of which he or she has been convicted.

136. Limitation

The effluxion of time is no bar to prosecution for an offence under this Act.

137. Preservation of civil remedy

A civil remedy for an act or omission under this Act is not suspended or affected by reason that the act or omission is an offence under this Act.

PART 14

EXEMPTIONS

138. Exemption from stamp duty and other taxes

- (1) The Credit Union is exempt from any stamp duty, taxes and fees, with which, under any law for the time being in force, instruments executed by or on behalf of such Credit Union or by an officer or member and relating to the business of such Credit Union, or any class of such instruments, are respectively chargeable.

- (2) Notwithstanding the provisions of any other law in force in Bermuda, the Credit Union shall be exempt from the payment of income tax, corporation tax and any other tax on the incomes of the Credit Union.
- (3) Notwithstanding the provisions of any other law in force in Bermuda providing for the payment of customs duties, consumption taxes, excise taxes, insurance licence fees and taxes, environmental levy or customs service charge, the Minister by Order published in the *Gazette*, exempt the society registered pursuant to this Act from liability to customs duties, consumption taxes, excise taxes, insurance licence fees and taxes, environmental levy or customs service charge on goods imported by the society.

PART 15

REGULATIONS

139. Regulations

- (1) The Minister may, acting on the advice of the Authority, make regulations generally for the implementation of this Act and prescribing anything which may be prescribed under this Act.
- (2) Without prejudice to the generality of subsection (1), regulations may in particular—
 - (a) prohibit certain business activities from being carried on by the Credit Union;
 - (b) prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act;
 - (c) prescribe forms, fees and charges;
 - (d) regulate advertising and the soliciting of deposits by whatever means (including electronic soliciting); and
 - (e) prescribe penalties not exceeding \$10,000 for any breach of the regulations.
- (3) Regulations made under this section are subject to the negative resolution procedure.