

BILL AS TABLED

A BILL

entitled

CREDIT UNIONS ACT 2010

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WHEREAS it is expedient to modernize Bermuda's legislation governing credit unions by strengthening the regulatory framework for their supervision and assigning supervisory and licensing responsibility to the Bermuda Monetary Authority;

AND WHEREAS credit unions are distinctive financial institutions committed to meeting the international credit union safety and soundness, good governance, consumer protection and operating principles issued by the World Council of Credit Unions;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

1 This Act may be cited as the Credit Unions Act 2010.

Interpretation

2 In this Act, unless the context otherwise requires —

“approved auditor” means an auditor who is a member of one of the professional bodies for the time being declared to be approved for the purposes of section 46(6) of the Banks and Deposit Companies Act 1999;

“Authority” means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

“Board” means the Board of Directors of a credit union, established pursuant to its by-laws;

“credit union” means an incorporated non-profit financial cooperative, owned and controlled by its members, that may accept savings deposits and provide credit and other financial services to them;

“member”, in relation to a credit union, means an individual who meets the criteria for membership established by the credit union;

“minimum criteria” means the criteria for licensing specified in Schedule 2;

“Minister” means the Minister of Finance;

“officer”, in respect of a credit union, includes members of all Committees established under the credit union's by-laws;

“PEARLS” means the International Prudential and Operating Standards and Monitoring System produced and approved by the World Council of Credit Unions, establishing standards for credit unions in respect of protection, effective financial structure, asset quality, rates of return and costs, liquidity and signs of growth;

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“prescribed” means prescribed by regulations made under section 40;

“prudential requirements” means the reserve funding, liquidity and lending requirements and requirements for external borrowing specified in Schedule 3, but does not include the criteria respecting the prudent conduct of a credit union’s business referred to in paragraphs 4 to 8 of Schedule 2;

“senior executive officer” means a person other than the chief executive officer of a credit union who, under the immediate authority of the chief executive officer —

- (a) exercises managerial functions; or
- (b) is responsible for maintaining accounts or other records of the credit union.

International principles and standards

3 (1) Every credit union shall endeavour to conform to the cooperative principles approved and published by the World Council of Credit Unions and to operate in compliance with PEARLS.

(2) A credit union conforms to the co-operative principles if—

- (a) each member or delegate has no more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its membership is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
- (d) its business is carried on primarily as an economic activity for the benefit of its members;
- (e) its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members;
- (f) it utilizes any surplus arising out of its operations—
 - (i) to strengthen its business;
 - (ii) to provide or improve common services to its members;
 - (iii) for the payment of dividends on permanent ownership capital purchased by its members;
 - (iv) among its members in proportion to the business done by each member with the credit union;
 - (v) to educate its members, employees, directors, committee members and the general public in the principles and techniques of financial, economic and democratic cooperation; and
 - (vi) for non-profit, charitable, benevolent or cultural purposes;

- (g) it pursues co-operation with other credit unions;
- (h) it provides for continuing financial education, counselling and training;
- (i) it contributes to the social and economic development of its community;
and
- (j) it adopts the safety and soundness, good governance, consumer protection and operating principles approved and published by the World Council of Credit Unions.

PART 2

REGULATION AND SUPERVISION OF CREDIT UNIONS

Bermuda Monetary Authority

Powers and duties of the Authority

4 The Authority shall have the powers conferred on it by this Act and the duty generally to supervise all credit unions licensed in Bermuda.

Authority's statement of principles

5 (1) The Authority shall as soon as practicable after the coming into force of this Act publish in such manner as it thinks fit a statement of principles in accordance with which it is acting or proposing to act—

- (a) in interpreting the minimum criteria and the prudential requirements;
- (b) in exercising its power to grant, amend, revoke or restrict a licence; and
- (c) in exercising its power to obtain information and reports and to require production of documents.

(2) If the Authority makes a material change to its principles, it shall publish a statement of the change or the revised statement of principles in the same manner as it published the statement under subsection (1).

Minister to issue directions to Authority

6 The Minister may from time to time give to the Authority general policy directions not inconsistent with this Act as to the performance of its functions under this Act and the Authority shall give effect to such directions.

Licensing

Prohibition on operating unlicensed credit union

7 (1) No person shall operate a credit union in or from Bermuda unless the credit union is for the time being licensed by the Authority under this Act.

(2) A person who contravenes this section is guilty of an offence and liable—

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- (a) on summary conviction to a fine of \$100,000 or to imprisonment for a period of two years, or to both;
- (b) on conviction on indictment to a fine of \$250,000 or to imprisonment for a period of five years, or to both.

Applications for licences

8 (1) A credit union shall make application to the Authority for a licence in such manner as the Authority may direct, and shall provide the Authority with —

- (a) a copy of a notice of the application that has been published in the Gazette;
- (b) such other information, documents and reports as the Authority may reasonably require for the purpose of determining the application; and
- (c) the application fee prescribed under the Bermuda Monetary Authority Act 1969.

(2) An application may be withdrawn by notice in writing to the Authority at any time before it is granted or refused, but in any such case the application fee shall not be refunded to the applicant.

Grant of licences

9 (1) The Authority may, on an application made in accordance with section 8, grant a licence to a credit union if—

- (a) the applicant is a body corporate incorporated in Bermuda;
- (b) the applicant's by-laws and name meet the requirements of sections 11 and 12 respectively;
- (c) the Authority is satisfied that the minimum criteria and the prudential requirements are fulfilled with respect to the applicant; and
- (d) the Minister has advised the Authority that he is satisfied that the grant of the licence is in accordance with the economic and financial policy of the government.

(2) The Minister, acting on the advice of the Authority, may by order amend Schedule 2 or 3 by adding new criteria or requirements or by amending or deleting the criteria or requirements for the time being specified in it.

(3) An order made under subsection (2) is subject to the negative resolution procedure.

Form, display and register of licences

10 (1) A licence shall be in such form as may be prescribed and shall set out the credit union's permitted business activities.

(2) A licence remains in force until it is revoked by the Authority.

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(3) The Authority shall cause a notice to be published in the Gazette of every grant of a licence.

(4) The Authority shall compile, maintain and publish in such manner as it thinks fit a register containing, in respect of each licence, such particulars as may be prescribed.

(5) A licensed credit union shall, at all times, keep its licence on display at its principal place of business in Bermuda.

By-laws

11 (1) Every credit union licensed under this Act shall have by-laws that comply with the requirements of Schedule 1 governing the organization and operation of the credit union.

(2) A provision in a credit union's by-laws is of no effect to the extent that it is inconsistent with Schedule 1.

Name of credit union

12 (1) Every credit union licensed under the Act must include the words "credit union" in its official name.

(2) Only a credit union licensed under this Act may use a name containing the words "credit union," may represent itself as a credit union, or may conduct business as a credit union.

(3) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Fees

13 (1) Every credit union licensed under this Act shall pay the annual fee prescribed under the Bermuda Monetary Authority Act 1969 in each calendar year on or before 30 April, beginning in the year after the year in which the credit union's licence was granted.

(2) A credit union shall also pay a fee on the grant of its licence, in an amount equal to the annual fee multiplied by the number of months in the period from the date of the grant of the licence to 31 December next following divided by twelve, counting part of a month as one month for the purpose of calculating the fee.

(3) A credit union that fails to pay a fee required to be paid under this section is liable to a civil penalty in the amount of \$500 for each week or part of a week that the payment is outstanding.

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

Restriction of licence

14 (1) The Authority may restrict a licence if—

- (a) it is satisfied that a ground of revocation specified in section 15 is met but that the circumstances are not such as to justify revocation;

- (b) it has given a credit union notice that it proposes to revoke its licence at any time after such notice has been given to the credit union; or
 - (c) the credit union has served a notice surrendering its licence with effect from a later date.
- (2) The Authority may restrict the licence by imposing such conditions as it thinks desirable for the protection of the credit union's members or potential members and for safeguarding its assets or otherwise, and may in particular—
- (a) require the credit union to take certain steps or to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
 - (b) impose limitations on the acceptance of deposits, the granting of credit or the making of investments;
 - (c) prohibit the credit union from soliciting deposits, either generally or from persons who are not already members;
 - (d) prohibit the credit union from entering into any other transactions or class of transactions;
 - (e) require the removal of the chief executive officer, a senior executive officer or any director; or
 - (f) specify requirements to be fulfilled otherwise than by action taken by the credit union.
- (3) Any condition imposed under this section may be varied or withdrawn by the Authority.
- (4) The Authority may, on the application of a credit union, vary any condition imposed on its licence.
- (5) A credit union that fails to comply with any requirement or contravenes any prohibition imposed on it by a condition under this section is guilty of an offence and is liable on summary conviction to a fine of \$50,000.
- (6) The fact that a condition imposed under this section has not been complied with (whether or not constituting an offence under subsection (5)) shall, where the restriction has been imposed pursuant to subsection (1)(a), be a ground for the revocation of the licence in question but shall not invalidate any transaction.

Revocation of licence

15 The Authority may revoke the licence of a credit union if the Authority is satisfied that—

- (a) any of the minimum criteria or prudential requirements are not or have not been fulfilled, or may not be or may not have been met in respect of the credit union;

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- (b) the credit union has failed to comply with any obligation imposed on it under this Act;
- (c) the Authority has been provided with false, misleading or inaccurate information by or on behalf of the credit union or, in connection with an application for a licence, by or on behalf of a person who is or is to be a director, chief executive officer or senior executive officer of the credit union; or
- (d) the interests of the members or potential members of the credit union are in any way threatened by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason.

Winding up on petition from the Authority

16 (1) On a petition presented by the Authority by virtue of this section, the Supreme Court may wind up a 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 a credit union under this section.

Notice of restriction or revocation of licence

17 (1) Where the Authority proposes to —

- (a) restrict a licence under section 14(1);
- (b) vary a restriction imposed on a licence otherwise than with the agreement of the credit union concerned; or
- (c) revoke a licence under section 15,

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 (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 the minimum criteria 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 chief executive officer, senior executive officer or director,

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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) A 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 licence, 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 licence, 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 22.

(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 sections 22(3) and (4), have the effect of restricting the licence or varying the restriction in the manner specified in the notice or of revoking the licence.

(9) Where the decision notified under subsection (7) is to restrict the licence or to vary the restrictions on a licence 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 with respect to the restrictions and 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 a credit union's licence 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.

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

Restriction in cases of urgency

18 (1) No notice need be given under section 17 in respect of the imposition or variation of a restriction on a credit union's licence in any case in which the Authority considers that the restriction should be imposed or varied as a matter of urgency.

(2) In any such case the Authority may by written notice to the credit union impose or vary the restriction.

(3) Any such notice shall state the reason for which the Authority has acted and particulars of the rights conferred by subsection (5) and section 22.

(4) Section 17(4) shall apply to a notice under subsection (2) imposing or varying a restriction as it applies to a notice under section 16(1) in respect of a proposal to impose or vary a restriction; but the Authority may omit from a copy given to a person by virtue of this subsection any matter which does not relate to him.

(5) A credit union to which a notice is given under this section of the imposition or variation of a restriction and a person who is given a copy of it by virtue of subsection (4) may, within the period of 14 days beginning with the day on which the notice was given, make representations to the Authority.

(6) After giving a notice under subsection (2) imposing or varying a restriction and taking into account any representations made in accordance with subsection (5), the Authority shall decide whether —

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The Authority shall, within the period of 28 days beginning with the day on which the notice was given under subsection (2), give the credit union concerned written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reason for the decision.

(8) Where the notice under subsection (7) is of a decision to take the action specified in subsection (6)(b), the notice under subsection (7) shall have the effect of imposing the restriction or making the variation specified in the notice and with effect from the date on which it is given.

Surrender of licence

19 (1) A credit union may surrender its licence 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.

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(3) The surrender of a licence 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.

Directions to protect interests of members

20 (1) The Authority may give a credit union directions under this section at any time after its licence is revoked or surrendered.

(2) Directions under this section shall be such as appear to the Authority to be desirable for safeguarding the interests of the credit union's members.

(3) No direction shall be given to a 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; and any such direction which is in force with respect to a credit union shall cease to have effect when the credit union ceases to have any such liability.

(4) A 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; or
- (b) on conviction on indictment to a fine of \$75,000.

Notification and confirmation of directions

21 (1) A direction under section 20 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 20, 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 22; and
- (b) without prejudice to section 20(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) A 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.

Appeals

Rights of appeal

22 (1) A credit union which is aggrieved by a decision of the Authority —

- (a) to restrict its licence, to restrict in a particular manner or to vary any restrictions of its licence; or

(b) to revoke its licence,

may appeal against the decision to a tribunal constituted in accordance with section 23.

(2) Where —

- (a) the ground or a ground for a decision within subsection (1)(a) or (b) is that mentioned in section 17(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 a 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) The revocation of a credit union's licence 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.

Constitution of tribunals

23 (1) Where an appeal is brought under section 22, a tribunal to determine the appeal shall be constituted in accordance with this section.

(2) The tribunal shall consist of a chairman, or in his absence a deputy chairman, and two other members.

(3) The chairman and the deputy chairman shall be appointed by the Minister for a term not exceeding three years, and shall be barristers and attorneys of at least seven years' standing.

(4) The Minister shall appoint a panel of not less than nine persons with relevant experience in accounting and finance to serve as members of the appeal tribunal.

(5) The chairman, or in his absence the deputy chairman, shall select the two other members of the tribunal from the panel appointed by the Minister in such a manner as to ensure that at least one member of the tribunal has credit union experience.

(6) A person shall not be eligible for appointment as chairman, deputy chairman or member of the tribunal if he is or has at any time during the period of three years ending with the date of his appointment been an officer, servant or agent of the Authority, of any credit union licensed under this Act, or of a company licensed under the Banks and Deposit Companies Act 1999 as a bank or deposit company.

Determination of appeals

24 (1) On an appeal under section 22(1) and (2) the question for the determination of the tribunal shall be whether, for the reasons adduced by the appellant, the decision was unlawful or not justified by the evidence on which it was based.

(2) On any such appeal the tribunal may confirm or reverse the decision which is the subject of the appeal but shall not have power to vary it except that —

- (a) where the decision was to impose or vary any restriction the tribunal may direct the Authority to impose different restrictions or to vary them in a different way; or
- (b) where the decision was to revoke a licence the tribunal may direct the Authority to restrict it instead.

(3) Notice of a tribunal's determination, together with a statement of its reasons, shall be given to the appellant and to the Authority; and, unless the tribunal otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Authority.

Costs, procedure and evidence

25 (1) A tribunal may give such directions as it thinks fit for the payment of costs or expenses by any party to the appeal.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted where appeals are brought both by an institution and by a person who is to be a controller or senior executive of an institution, including provision for the hearing of the appeals together and for the mutual disclosure of information;
- (d) for requiring an appellant or the Authority to disclose or allow the inspection of documents in their custody or under their control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Authority to withdraw its opposition to an appeal and for the consequences of any such withdrawal;

- (g) for taxing or otherwise settling any costs or expenses which the tribunal directs to be paid and for the enforcement of any such direction;
 - (h) for enabling any preliminary or incidental functions in relation to an appeal to be discharged by the chairman or, as the case may be, the deputy chairman of the tribunal; and
 - (i) as to any other matter connected with such appeals.
- (3) Regulations made under subsection (2) shall be subject to negative resolution procedure.
- (4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or give evidence shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.
- (5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be required to produce, shall be guilty of an offence and liable—
- (a) on summary conviction to a fine of \$50,000 or to imprisonment for six months or to both; and
 - (b) on conviction on indictment to a fine of \$100,000 or to imprisonment for a term of two years or to both.

Further appeals on a point of law

- 26 (1) A credit union or other person who has appealed to a tribunal may appeal to the Supreme Court on any question of law arising from the decision of the appeal by the tribunal and an appeal on any such question shall also lie at the instance of the Authority; and if the court is of the opinion that the decision was erroneous in point of law it shall remit the matter to the tribunal for re-hearing and determination by it.
- (2) No appeal to the Court of Appeal shall be brought from a decision under subsection (1) except with leave of that court.

Appointment of Administrator

Appointment of administrator by court

- 27 (1) The Supreme Court may, on application of the Authority, make an order appointing a person with appropriate experience to manage and administer the business of a credit union if –
- (a) the Authority has restricted the credit union's licence so as to require the removal of the chief executive officer or senior executive officer or the appointment of an officer to replace one or more of those officers;
 - (b) the credit union has failed to comply with the restriction referred to in paragraph (a); and

- (c) the court is satisfied that the chief executive officer or senior executive officers are not fit and proper persons to hold the positions that they hold.
- (2) An administrator appointed under subsection (1) shall, in managing and administering the business of the credit union, take such action as will protect the interests of the members of the credit union but shall not take on any new business.
- (3) 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.
- (4) With effect from the date of appointment of the administrator—
 - (a) every person 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.
- (5) An administrator appointed under subsection (1) shall receive such remuneration as the Court may determine and that remuneration shall be charged to, and be payable by, the credit union.

Financial Statements and Audit

Appointment of auditors

- 28
- (1) At each annual meeting, a 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 Authority may appoint an approved auditor and shall fix the remuneration to be paid by the credit union to such auditor.
 - (3) A credit union shall forthwith give written notice to the Authority if the credit union—
 - (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) A credit union that fails to comply with subsections (1) or (3) commits an offence and is liable on summary conviction to a fine of \$50,000.
 - (5) No person having an interest in a credit union and no member, officer, servant or agent of a credit union shall be eligible for appointment as an approved auditor for that 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.

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Duty to prepare annual statements and accounts and to audit

29 (1) A credit union shall cause unaudited financial statements to be prepared and shall provide copies of them to the Authority no later than 30 days after the end of each quarter.

(2) A credit union shall prepare in accordance with this section annual financial statements or accounts in respect of all transactions and balances relating to the credit union's business and shall cause them to be audited annually.

(3) The credit union shall provide the Authority with 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 returns 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; and
- (b) make the copy of the financial statements and report available for inspection by any person, on request, during normal business hours.

(6) A 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 of \$25,000.

Auditor to communicate certain matters to Authority

30 (1) The auditor of a 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 of a credit union shall forthwith give written notice to the Authority of 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 which he is an auditor, of the Authority's functions under this Act.

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(3) An auditor who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$25,000.

(4) No duty to which an auditor of a 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 under this Act.

Information and Reports

Annual returns

31 (1) Every credit union shall deliver to the Authority a return, 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 the name and address of every person who—

- (a) is a director, chief executive officer, senior executive officer or officer of the credit union on the date to which the return was made up; or
- (b) 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).

(3) If a 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.

Matters required to be notified to the Authority

32 (1) A credit union shall notify the Authority of the following—

- (a) failure of the credit union to meet any prudential requirement, minimum licensing criterion or other obligation imposed on it under this Act;
- (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 chief executive officer, senior executive officer or director of the credit union;
- (e) any matter that may have a significant impact on their 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) A credit union which fails to give notice as required by this section is guilty of an offence and liable on summary conviction to a fine of \$50,000.

Power to obtain information and reports

- 33 (1) The Authority may by notice in writing served on a credit union—
- (a) require the credit union to provide the Authority (or such person acting on behalf of the Authority as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Authority may reasonably require for the performance of its functions under this Act; or
 - (b) require the credit union to provide the Authority with a report, in such form as may be specified in the notice, by the credit union's auditor or by an accountant or other person with relevant professional skill on, or on any aspect of, any matter about which the Authority has required or could require the credit union to provide information under paragraph (a).
- (2) The person appointed by a credit union to make the report required under subsection (1)(b) shall forthwith give written notice to the Authority of 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 the Authority's functions under this Act.

Power to require production of documents

- 34 (1) The Authority may—
- (a) by notice in writing served on a credit union require it to produce, within such time and at such place as may be specified in the notice, such information or documents of such description as may be so specified;
 - (b) authorise an officer, servant or agent of the Authority, on producing evidence of his authority, to require any such credit union to provide him forthwith with such information, or to produce to him forthwith such documents, as he may specify,

being such information or documents as the Authority may reasonably require for the performance of its functions under this Act.

(2) Where, by virtue of subsection (1), the Authority or any officer, servant or agent of the Authority has power to require the production of any documents from a credit union, the Authority or that officer, servant or agent shall have the like power to require the production of those documents from any person who appears to be in possession of them; but where any person from whom such production is required claims a lien on documents produced by him, the production shall be without prejudice to the lien.

(3) The power under this section to require a credit union or other person to produce any documents includes power—

- (a) if the documents are produced, to take copies of them or extracts from them and to require that credit union or person, or any other person who is a present or past director, controller or senior executive of, or is or was at any time employed by or acting as an employee of, the credit union in question, to provide an explanation of any of them; and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) The Authority may by notice in writing served on any person who is or is to be a director, chief executive officer, senior executive officer or officer of a credit union require him to provide the Authority, within such time as may be specified in the notice, with such information or documents as the Authority may reasonably require for determining whether he is a fit and proper person to hold the particular position which he holds or is to hold.

(5) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section 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) 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.

Right of entry to obtain information and documents

35 (1) Any officer, servant or agent of the Authority may enter any premises occupied by a person on whom a notice has been served under section 33(1) or 34(1) for the purpose of obtaining there the information or documents required by that notice and of exercising the powers conferred by section 34(3).

(2) The Authority may authorise one of its officers, servants or agents to enter any premises occupied by any person on whom a notice could be served under section 33(1) or 34(1) for the purpose of obtaining there such information or documents as are specified in the notice, if the Authority has reasonable cause to believe that if such a notice were served it would not be complied with or that any documents to which it would relate would be removed, tampered with or destroyed.

(3) The officer, servant or agent of the Authority shall produce evidence of his authority to enter the premises, if required to do so.

Investigations

Investigations on behalf of the Authority

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

- (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, officer, employee, agent, banker, auditor or barrister and attorney

of a 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)—

- (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 all 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 a 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 (2) ;
- (b) without reasonable excuse fails to attend before the persons appointed under subsection (1) when required to do so; or
- (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to a credit union which is under investigation or a company which is being investigated by virtue of subsection (2),

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.

Investigation of suspected contraventions

37 (1) Where the Authority has reasonable grounds for suspecting that a person has contravened section 7, 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 for that purpose; or
 - (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 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.

Powers of entry in cases of suspected contraventions

- 38 (1) A magistrate may issue a warrant under this section if satisfied on information on oath laid by an officer of the Authority or laid under the Authority's authority that there are reasonable grounds for suspecting that a person has contravened section 7 and—
- (a) that the 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; or
- (d) to require any person named in the warrant to answer questions relevant for determining whether that person has contravened section 7.

(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 33, 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.

Obstruction of investigations

39 (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 7; or
- (b) under section 37,

is guilty of an offence if he 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

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he had no intention of concealing facts disclosed by the documents from persons carrying out such an investigation.

- (2) 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.

Regulations

Regulations

40 (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) for the purposes of section 30(2), prescribe the facts or matters which are likely to be of material significance for the discharge of the Authority's functions under this Act;
- (b) regulate advertising and the soliciting of deposits by credit unions by whatever means (including electronic soliciting); and
- (c) 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.

Civil Liability of Members

Liability of members for debts of credit union

41 A member is not personally or individually liable for the payment of the credit union's debts in excess of the amount of his individual ownership of shares.

Offences

Obstruction

42 Any person who intentionally obstructs a person exercising rights conferred by section 33(1), 34(1) or 35(1) 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.

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Offences by bodies corporate

43 (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, senior executive, secretary or officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly unless such person shows that he took all reasonable steps to avoid the commission of an offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART 3

FINAL PROVISIONS

Repeals

44 The Credit Unions Act 1982 and Credit Unions (Delegation of Minister's Functions) Order 1989 are repealed.

Transitional - Conflict with private Act

45 Where the provisions of a private Act incorporating a credit union conflict with the provisions of this Act, the provisions of the private Act, other than any provision that conflicts with the minimum criteria, shall prevail until such time as the private Act is amended.

Transitional- B.I.U Members Credit Union Co-Op Society

46 (1) On the coming into operation of this Part, the Authority shall grant a licence to the B.I.U. Members Credit Union Co-Op Society, a credit union registered under the Credit Unions Act 1982.

(2) Upon the grant of the licence under subsection (1), this Act shall apply to the B.I.U. Members Credit Union Co-Op Society in the same manner as if the Society had made an application under section 8 and had been granted a licence by the Authority under section 9(1).

Consequential amendments

47 The enactments specified in column 1 of Schedule 4 are amended as specified in column 2 of that Schedule.

Commencement

48 The provisions of this Act come into operation on a day or days to be appointed by the Minister by notice in the Gazette.

SCHEDULE 1

(section 11)

REQUIREMENTS FOR BY-LAWS

Matters to be included in by-laws

- 1 (1) The by-laws shall—
- (a) define the credit union's objects, membership, board, committees, scope of activities and services;
 - (b) provide for the rights of members, meetings, the duties and responsibilities of credit union officials, operational management and any other matter specified in this Schedule; and
 - (c) adopt the safety and soundness, good governance, consumer protection and operating principles approved and published by the World Council of Credit Unions.
- (2) The by-laws shall not be rescinded or altered except at a general meeting of the members, and no rescission or amendment of the by-laws shall take effect until approved by the Authority.

Membership of a credit union

- 2 (1) The by-laws shall set out the requirements for membership in the credit union including the criteria for membership, the number of shares to be subscribed by members, membership fees and the grounds for the expulsion and withdrawal of members.
- (2) The membership criteria shall set out the pre-existing common bond of association or community of interest among the individuals who belong to the credit union, including individuals—
- (a) who have a similar occupation or profession or are employed by a common employer or within the same business district or market area; or
 - (b) who have common membership in an association or organization, including, but not limited to, religious, social, cooperative, labour or educational groups.
- (3) Provision shall be made for societies, associations, partnerships and companies composed primarily of individuals eligible for membership to be admitted to membership in the credit union.
- (4) Provision shall be made for members to have the exclusive right to save or borrow from the credit union.

Meetings

- 3 (1) The by-laws shall require the holding of an annual general meeting of the members of a credit union no later than four months after the close of the credit union's fiscal year.

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(2) The by-laws shall provide for the time, place and manner of holding the annual general meeting and special meetings called by the members, the Board, the Supervisory Committee or the Credit Committee and shall specify the minimum number of members that must be present to conduct business at the meetings.

(3) Provision shall be made, at the annual general meeting, to set the maximum liability that a credit union may incur in respect of loans and deposits from members.

(4) Provision shall be made for the election, at the annual general meeting, of the Board, the Supervisory Committee and the Credit Committee from among the members of the credit union.

(5) Provision for voting shall be made that—

- (a) entitles every member who is 18 years of age or over to vote at the meetings;
- (b) entitles a member to vote by absentee ballot, mail or other method provided in the by-laws; and
- (c) prohibits a member from voting more than once or voting by proxy.

Board

4 (1) The by-laws shall require the Board—

- (a) to be responsible to the members for directing and controlling the business, funds and records of the credit union; and
- (b) to meet regularly and report annually to the members on its governance of the credit union.

(2) The by-laws shall provide for—

- (a) the election by the members of a Board consisting of an odd number of directors, not less than five in number;
- (b) the holding of office by the directors for one or more fixed terms of three years, which shall be staggered so that an approximately equal number of terms expire each year; and
- (c) the expulsion from the Board, at its discretion, of any director who has delinquent loans or who has failed to attend three consecutive Board meetings.

(3) Provision shall be made outlining the roles and responsibilities of the Board, its committees and officers including —

- (a) the process for the election of members of the Board, the Supervisory Committee and the Credit Committee, and for the establishment of other committees;
- (b) the duties of the executive officers;
- (c) the temporary filling of vacancies occurring on the Board or in any committee until successors are elected at the next annual meeting; and

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- (d) the delegation of authority to the executive officers to act collectively on behalf of the Board between Board meetings, and the conditions or limitations that apply to such delegation.

Committees

5 (1) The by-laws shall provide for the election, from the membership of the credit union, of—

- (a) a Supervisory Committee, whose functions shall be—
 - (i) to examine the financial affairs of the credit union, including examining, at least once per quarter, financial records and statements and producing an annual report of its audit to be presented to the members at the Annual General Meeting;
 - (ii) to oversee the credit union's internal control system and assess the adequacy of internal controls; and
 - (iii) to monitor compliance with laws, regulations, by-laws and the rules to prevent money laundering and the financing of terrorism; and
- (b) a Credit Committee, whose functions shall be —
 - (i) to approve and supervise loans to members and to ensure compliance with the lending policy; and
 - (ii) to verify the ability of borrowing members and their guarantors to meet their obligations under the terms of their loans.

(2) Provision shall be made precluding any member of the Board from being elected to, or being a member of, the Supervisory Committee.

(3) The by-laws shall allow the Board to establish, in accordance with the by-laws, such additional committees as it considers necessary to conduct the business of the credit union.

Executive Officers

6 (1) The by-laws shall provide for the election by the Board, from among its members of the executive officers of the credit union, namely the chairperson, vice chairperson, treasurer and secretary. The election shall be held within 30 days following the annual meeting.

(2) Provision shall be made for the executive officers to serve for a term of one year or until their successors are chosen, and for their election for any number of terms.

Chief Executive Officer and Staff

7 (1) The by-laws shall provide for the Board to appoint a chief executive officer and senior executive officers of the credit union, to whom it may delegate the authority and responsibility for managing the credit union's operations.

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(2) Provision shall be made for the Board to authorize the chief executive officer to employ any additional persons needed to administer the business of the credit union.

(3) The by-laws shall require the chief executive officer to ensure that the credit union has an effective control culture which promotes—

- (a) an appropriate and effective control environment that supports the effective and prudent management of the credit union's operations, and of the risks to which it is exposed;
- (b) reporting procedures to ensure the Board is provided with timely, relevant, accurate and complete reports that will enable it to assess whether the credit union is operating effectively; and
- (c) appropriate and effective processes for assisting the Board in assessing whether a credit union is meeting the prudential requirements and the minimum criteria.

Remuneration of officers, directors and committee members

8 (1) The by-laws shall provide that no elected officer, director or committee member, other than the chief executive officer when serving as a director, may be compensated for services to the credit union by means of a salary.

(2) Provision shall be made that, notwithstanding subsection (1), a person referred to in that subsection may be reimbursed for necessary expenses incurred that are incidental to the performance of the business of the credit union.

SCHEDULE 2

(section 2)

MINIMUM CRITERIA

Directors and officers to be fit and proper persons

1 (1) Every person who is, or is to be, the chief executive officer, a senior executive officer, an officer or a director of a credit union shall be a fit and proper person to hold the particular position which he holds or is to hold.

(2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to—

- (a) the person's qualifications, training and previous conduct and activities in business or financial matters;
- (b) the person's probity, reputation and character;
- (c) the competence and soundness of the person's judgement for fulfilling the responsibilities of that position; and
- (d) the diligence with which the person is fulfilling or likely to fulfil those responsibilities.

(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the person in question and, in particular, to any evidence that the person has—

- (a) committed an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision made by or under any enactment appearing to the Authority to be designed for protecting members of the public against financial loss due to—
 - (i) dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies; or
 - (ii) the conduct of discharged or undischarged bankrupts;
- (c) been censured or disqualified by any professional or regulatory body;
- (d) engaged in any business practices appearing to the Authority to be deceitful or oppressive or otherwise improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
- (e) engaged in or has been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgement.

(4) In assessing whether a person is fit and proper for a particular position in light of evidence of past misconduct, regard shall also be had to the lapse of time since the misconduct and the person's subsequent conduct.

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Business to be directed by at least two individuals

2 At least two individuals shall effectively direct the business of the credit union.

Composition of Board

3 The directors shall include such number (if any) of directors without executive responsibility for the management of the credit union's business as the Authority considers appropriate having regard to the circumstances of the credit union and the nature and scale of its operations.

Business to be conducted in a prudent manner

4 (1) A credit union shall conduct its business in a prudent manner, with integrity and the professional skills appropriate to the nature and scale of the credit union's activities.

(2) A credit union shall not be regarded as conducting its business in a prudent manner unless it has sufficient resources to support its activities and meets the requirements set out below.

(3) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains adequate accounting and other records of its business and has adequate systems of control of its business and records.

(4) A credit union shall not be regarded as conducting its business in a prudent manner unless it has or will have appropriate insurance arrangements in place.

(5) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains sufficient institutional capital to protect members' savings, to cover possible losses from loans and investments and other contingencies, and to be available to creditors on winding up.

(6) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains sufficient liquidity on hand to meet operating expenses and day-to-day demands for withdrawals, having regard to the relationship between its liquid assets and its actual and contingent liabilities and to the times at which those liabilities may fall due and its assets mature.

(7) For the purposes of subparagraph (6), the Authority, in assessing liquidity, shall focus on the ability of a credit union to cope with unexpected events and may take into account as liquid assets—

- (a) assets of the credit union; and
- (b) facilities available to the credit union that are capable of providing liquidity within a reasonable period.

Requirements respecting investments

5 (1) A credit union shall not be regarded as conducting its business in a prudent manner unless it adopts a reasonable and prudent approach to investments in order to avoid undue interest rate risk and concentration risk, while obtaining a reasonable return.

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(2) The Board is responsible for formulating, reviewing and adjusting an investment policy, which shall address the following—

- (a) the purpose and objectives of the investment activities;
- (b) the types of investments that can be made;
- (c) who has authority to make the investments and the extent of the authority;
- (d) the need for adequate investment diversification across investment type or entity; and
- (e) the need to review the investment policy annually and from time to time as needed.

Lending Requirements

6 (1) A credit union shall not be regarded as conducting its business in a prudent manner unless it has a lending policy, approved by the Board, which sets out the policies and procedures for the management of arrears and for the proper recording and reporting of past due loans, including—

- (a) the lending policy's objectives;
- (b) eligibility requirements for receiving a loan;
- (c) classification of loans offered;
- (d) required loan documentation;
- (e) acceptable types of collateral;
- (f) interest rates, terms and repayment conditions;
- (g) maximum loan amounts;
- (h) how to determine the borrower's ability to repay the loan; and
- (i) the identification of the loan approval authority.

(2) A credit union shall not be regarded as conducting its business in a prudent manner unless it manages unsecured loans prudently.

Requirements respecting arrears

7 (1) A credit union shall not be regarded as conducting its business in a prudent manner unless it has in place a documented arrears management policy, setting out the procedures and process for dealing with borrowers who fall into arrears.

(2) A credit union shall not be regarded as conducting its business in a prudent manner unless it reviews its arrears management policy regularly, identifies the types of loans which commonly fall into arrears and makes appropriate amendments to the policy.

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Provisioning Requirements

8 (1) A credit union shall not be regarded as conducting its business in a prudent manner unless it reviews loans to customers to ascertain the level of risk of default for loans that are in arrears and includes a section in its arrears management policy on provisioning.

(2) A credit union shall not be regarded as conducting its business in a prudent manner unless it makes every effort to collect delinquent loans and to recognize losses on delinquent loans so that its financial statements represent its true financial position.

SCHEDULE 3

(section 2)

PRUDENTIAL REQUIREMENTS

Reserve Funding Requirements

1 (1) A credit union shall maintain a reserve fund and other institutional capital not less than 10% of its total assets.

(2) At the close of each financial year, 25% of the credit union's net surplus 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.

(4) In this paragraph, reserve fund means a fund that belongs to a credit union that is used for repayment of shares to members and to recoup losses.

(5) In this paragraph "institutional capital" means the aggregate of—

- (a) the credit union's statutory or other non-distributable general reserves;
- (b) the credit union's earnings retained after distribution of surplus; and
- (c) such other funds which may be received by the credit union by way of non-refundable donations for no specified purpose, which are not available for distribution.

Liquidity Requirements

2 A credit union shall maintain a minimum liquidity ratio of 15% of withdrawable savings in cash or highly liquid assets.

Lending Requirements

3 (1) The maximum period for which a credit union can lend to any member is ten years.

(2) A credit union shall not lend an amount exceeding 10% of its institutional capital or 2% of aggregate withdrawable shares, whichever is less, to any individual member and its total loan portfolio shall not exceed 80% of the credit union's total assets.

Requirements for external borrowing

4 A credit union shall not borrow an amount exceeding 10% of its total assets or fourtimes its retained earnings and its reserves, whichever is less.

SCHEDULE 4

(section 47)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Banks and Deposit Companies Act 1999	In paragraph 1(d) of the First Schedule, delete the words "registered under the Credit Unions Act 1982" and substitute the words "licensed under the Credit Unions Act 2010"
Foreign Currency Purchase Tax Act 1975	In paragraph 1(f) of the Second Schedule delete the words "registered under the Credit Unions Act 1982" and substitute the words "licensed under the Credit Unions Act 2010"
Bermuda Monetary Authority Act 1969	In the definition "credit union" in section 1(1) delete the words "Credit Unions Act 1982" and substitute the words "Credit Unions Act 2010"
Government Authorities (Fees) Act 1971	In Part B of the First Schedule insert in its appropriate alphabetical order "Appeal Tribunal constituted in accordance with section 23 of the Credit Unions Act 2010"
Proceeds of Crime Regulations (Supervision and Enforcement) Act 2008	In paragraph (b) of the definition "regulatory Acts" in section 2(1) delete the words "Credit Unions Act 1982" and substitute the words "Credit Unions Act 2010"

CREDIT UNIONS BILL 2010

EXPLANATORY MEMORANDUM

This Bill seeks to enact legislation to modernize and strengthen Bermuda's regulatory framework for credit unions so as to ensure that credit unions can meet members' needs for access to an affordable range of financial products and services while affording adequate protection to their members.

Clause 1 provides for the Bill's short title.

Clause 2 defines a number of terms used in the Bill including the terms "minimum criteria" and "prudential requirements", the elements of which are set out in Schedules 2 and 3.

Clause 3 sets out the international cooperative principles and standards issued by the World Council of Credit Unions, which credit unions shall endeavour to meet.

Clause 4 gives the Bermuda Monetary Authority the duty and powers to supervise credit unions in Bermuda.

Clause 5 requires the Authority to publish a statement of principles in accordance with which it will exercise its functions under the Act.

Clause 6 gives the Minister of Finance the power to issue directions to the Authority on the exercise of its functions.

Clause 7 makes it an offence to operate a credit union in Bermuda without a licence and provides a penalty in respect to persons convicted of the offence.

Clause 8 sets out the procedures for applications for licences.

Clause 9 gives the power to the Authority to grant licences. It also gives power to the Minister to make orders amending Schedules 2 and 3.

Clause 10 provides for the form and duration of licences. It requires the Authority to publish notices when licences are granted and to keep a register; it also requires the credit union to display its licence at its principal place of business.

Clause 11 requires licensed credit unions to make by-laws that comply with the requirements of Schedule 1.

Clause 12 requires the credit union's name to include the words "credit union" and creates an offence and penalty for misuse of that name.

Clause 13 provides for fees to be paid by licensed credit unions and provides for penalties for failure to pay the fees.

Clause 14 sets out the circumstances in which the Authority may restrict a credit union's licence and the conditions that it may impose. It also creates an offence and penalty for failure to comply with a licence condition.

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Clause 15 sets out the circumstances in which the Authority may revoke a credit union's licence.

Clause 16 sets out the circumstances in which the Supreme Court may wind up a credit union whose licence has been revoked and provides for the application of Part XIII of the Companies Act 1981 to the winding up.

Clause 17 requires the Authority to give a credit union notice of its intention to restrict its licence, vary a restriction or revoke a licence. It also provides a process for the credit union to make representations to the Authority in respect of the notice and for the Authority to consider representations and to make and communicate its decision to the credit union. Finally, the clause provides for further representations in respect of the decision in certain cases.

Clause 18 provides for a summary notice to be given to a credit union where the Authority must impose a restriction urgently. It also provides for a different process than the one set out in clause 17 for credit union representations and decisions by the Authority in respect of the notice.

Clause 19 provides for the surrender of a credit union's licence and for the date that the surrender takes effect. It also sets out the circumstances in which the surrender may be withdrawn.

Clause 20 enables the Authority to issue directions in certain circumstances to a credit union whose licence has been revoked or surrendered. It also creates an offence and penalty for failing to comply with a direction issued by the Authority.

Clause 21 provides for the manner of giving, varying and revoking directions and their content. It also provides for representations respecting directions to be made by a credit union, for the taking of effect of directions, and for their confirmation by the Authority.

Clause 22 provides a credit union with a right of appeal against the restriction or revocation of its licence. It suspends the revocation until the appeal is brought and determined and gives the appeal tribunal the power to suspend restrictions while an appeal is pending. The clause also provides a right of appeal against the "fit and proper" ground for the restriction or revocation of a licence by the person found not to be "fit and proper" and an appeal by an officer removed as chief executive or senior executive.

Clause 23 provides for the constitution of the appeal tribunal referred to in Clause 22, including the appointment of the chairman, deputy chairman and other members of the tribunal, eligibility for appointment, qualifications required and the length of appointments.

Clause 24 sets out the question to be determined by the appeal tribunal and the powers of the tribunal to confirm, reverse or vary the Authority's decision. It also provides for the tribunal to give notice of its determination and the reasons for it.

Clause 25 provides for the tribunal to give directions as to costs and gives the Minister the power to make regulations, subject to the negative resolution procedure, with respect to appeals. It also creates offences and penalties for failure to attend and give evidence to the tribunal or for altering, suppressing, concealing, destroying or refusing to give evidence.

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Clause 26 provides for the appeal of the appeal tribunal's decisions to the Supreme Court on a question of law and to the Court of Appeal with leave of that court.

Clause 27 provides for the Supreme Court to appoint an administrator to administer the business of a credit union in certain circumstances and sets out the duties and powers of the administrator. The clause empowers the Supreme Court to give directions to the administrator and provides for his or her remuneration.

Clause 28 provides for the appointment of an auditor for the credit union and requires the credit union and auditor to give notice to the Authority in certain circumstances. The clause also creates an offence and penalty for failure of the credit union or auditor to comply with its provisions.

Clause 29 provides for financial reporting by the credit union to the Authority, sets out the details of statements and returns required and specifies the accounting standards to be used. The clause makes provision for inspection of financial statements and creates an offence and penalty for failure to prepare the statements or have them audited.

Clause 30 requires the auditor to communicate certain matters to the Authority and creates an offence and penalty for failing to do so.

Clause 31 requires a credit union to deliver an annual return to the Authority, sets out the contents of the return, and creates an offence and penalty for failing to deliver it.

Clause 32 provides for certain matters that a credit union must notify to the Authority, sets out a time period for notifications and creates an offence and penalty for failing to notify.

Clause 33 gives the Authority powers to require information and reports from the credit union and places a duty on the credit union to provide notification of matters to the Authority that affect its functions under the Act.

Clause 34 gives the Authority powers to require credit unions to produce such information and documents as it may require to perform its duties (other than legally privileged documents), to take copies of them and to receive explanations about them from the credit union. The clause also creates an offence and penalty for failing to produce the documents or information.

Clause 35 gives the Authority's officers, servants and agents the right to enter premises to obtain information or documents where a notice has been sent to a credit union requesting them. It also gives the Authority the power to authorize its officers to enter premises to obtain information or documents where it fears that entry would be refused, or that the information or documents would be destroyed, if a notice were sent.

Clause 36 gives the Authority the power to appoint investigators to report to it on the ownership or control of a credit union or in respect to its business. The clause gives investigators powers of entry and places a duty on the credit union, its officers and agents to attend before an investigator and produce the information he requests (other than legally privileged information). It also creates an offence and penalty for failing to produce the documents or information.

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Clause 37 provides for greater powers of investigation where the Authority suspects that a credit union is operating without a licence, including powers of entry and powers to require information, the production of documents (other than legally privileged documents) and answers to the Authority's questions. The clause also creates an offence and penalty for failing to comply with a requirement imposed by it.

Clause 38 provides for the issue of a search warrant by a magistrate who suspects that a credit union is being operated without a licence and that a warrant is required to obtain information pertaining to such operation. The clause provides for the period during which the warrant shall continue in force and for retention of documents seized under it. It also creates an offence and penalty for obstructing the execution of the warrant.

Clause 39 creates an offence for falsifying, concealing, destroying or disposing of documents that are relevant to an investigation and sets the penalty for the offence.

Clause 40 gives the Minister the powers necessary to make regulations, subject to the negative resolution procedure, for implementation of the Act.

Clause 41 gives a limited protection to members of the credit union against civil liability for its debts.

Clause 42 creates a general obstruction offence and sets the penalties for it.

Clause 43 creates an offence for officers and directors of a credit union who consent to or connive in an offence by the credit union.

Clause 44 repeals the Credit Unions Act 1982 and Credit Unions (Delegation of Minister's Functions) Order 1989.

Clause 45 provides transitional rules for resolution of conflicts between the provisions of a credit union's private Act and the provisions of the Bill.

Clause 46 provides for the granting of a licence to the B.I.U. Members Credit Union Co-Op Society on the coming into operation of the Act.

Clause 47 makes the consequential amendments set out in Schedule 4.

Clause 48 provides for the coming into operation of the Act.