



Tonga

CREDIT UNIONS ACT 2021

Act 6 of 2021



CREDIT UNIONS ACT 2021

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CREDIT UNIONS ACT 2021

Act 6 of 2021

AN ACT TO PROVIDE FOR THE ORGANISATION, OPERATION, REGULATION, AND SUPERVISION OF CREDIT UNIONS; TO PRESCRIBE THE POWERS AND DUTIES, AND REMEDIES FOR UNSAFE AND UNSOUND PRACTICES OR VIOLATIONS OF LAW AND REGULATIONS; AND TO PROVIDE FOR THE ORDERLY EXIT OF RLY EXIT OF INSOLVENT CREDIT UNIONS.

I assent,
TUPOU VI,
28th October 2021.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short Title and Commencement

- (1) This Act may be cited as the Credit Unions Act 2021.
- (2) This Act shall come into force on a date proclaimed by Cabinet and published in a notice in the Gazette.

2 Objective

- (1) The objectives of this Act is to provide for the licensing, operation and supervision of credit unions, as established under this Act to maintain public confidence in credit unions doing business in Tonga through promoting the safe and sound operation of such institutions.
- (2) The Reserve Bank, under the direction of its Governor, shall discharge the functions in a way that is compatible with this objective and most appropriate for the purpose of meeting this objective.

3 Interpretation

In this Act, unless the context otherwise requires -

“**annual percentage rate**” means aggregate rate per annum in percentage consisting of interest, processing fees, service charges and any other charges or fees realised by the credit union on any loans provided to any customer;

“**applicant**” means one of the persons that applies to register a credit union under section 9;

“**board**” means the board of directors of a credit union;

“**credit union**” means a voluntary, cooperative, non-profit financial institution engaged in credit union business licensed by the Reserve Bank under this Act;

“**credit union business**” means the business of accepting deposits from members and employ such funds either in whole or in part for the purpose of creating a source of credit for its members at fair and reasonable interest rates, and to provide any other financial services permitted under this Act;

“**declining balance calculation method**” shall mean that the interest charged on any loan payment is to be calculated based on the current outstanding principal and accounting for all payments made in previous periods;

“**definable community of interest**” means a community of interest based on occupation, association, or residence;

“**deposit**” means a sum of money paid to a person on condition that it is to be repaid in full by that person, with or without interest or premium either on demand or at an agreed time;

“**field of membership**” means, with respect to a credit union, persons that share the definable community of interest of that credit union;

“**membership share**” and “**share**” means a share of a credit union subscribed and paid for by a member of the credit union and having the terms and conditions as specified in the bylaws;

“**minor**” means a person under the age of 18;

“**net income**” means the net income or net profit of a credit union determined in accordance with section 43(1);

“**organisation**” means a corporation, partnership, association, limited liability company, or other legal entity;

“**person**” means a natural or juridical person;

“**related members**” means members that bear one or more of the following relationships to each other -

- (a) a spouse or family member up to the first degree of consanguinity;
- (b) shared ownership, investment, or other financial interest in the same business enterprise; or
- (c) a business enterprise in which a member has an interest described in paragraph (b) if that enterprise is itself a member;

“**Reserve Bank**” means the National Reserve Bank of Tonga established under the National Reserve Bank of Tonga Act (Cap. 16.12);

“**Supervisory agency**” means an organisation, whether in Tonga or another jurisdiction, that is assigned by law with the responsibility for supervision of one or more types of financial service providers; and

“**unsafe or unsound practice**” means an action or inaction in the operation of a credit union that is contrary to generally accepted standards of prudent operation, the likely consequences of which, if continued, would be a material risk of loss or danger to a credit union, the credit union's members, or an organisation insuring or guaranteeing the credit union's shares and deposits.

PART II - THE RESERVE BANK AND GENERAL PROVISIONS

4 The Reserve Bank

The Reserve Bank, under the direction of its Governor, shall –

- (a) be the Regulator of the credit unions in the Kingdom of Tonga;
- (b) subject to section 4A(k) of the National Reserve Bank of Tonga Act (Cap 16.12) regulate and supervise credit unions; and
- (c) conduct the day-to-day supervision of credit unions and carry out the implementation of this Act.

5 Delegation

Subject to section 9A(2) and 15(1)(b) of the National Reserve Bank of Tonga Act (Cap 16.12), the Reserve Bank may delegate any of its duties and obligations under this Act to a suitably qualified member of the staff and any function so delegated shall be performed in such manner as the Reserve Bank directs.

6 Examiners

- (1) The Reserve Bank shall appoint a sufficient number of credit union examiners and other staff of the Reserve Bank to perform fully the duties imposed by this Act.
- (2) Appointment of an examiner is subject to recruitment specifications and qualifications approved by the Reserve Bank.
- (3) A person who is a director, committee member, officer or employee of a credit union may not serve as an examiner or in any other professional capacity at the Reserve Bank.

7 Authority to contract for professional services

For the purpose of carrying out the powers, duties, and responsibilities of the Reserve Bank under this Act, the Reserve Bank may negotiate, contract, or enter into an agreement for professional services, consistent with applicable procurement requirements for soliciting and awarding contracts.

PART III – LICENSING OF CREDIT UNIONS

DIVISION 1 – LICENSING REQUIREMENTS

8 Prohibition from doing credit union business without a licence, credit union name and criminal penalty

- (1) No cooperative entity shall engage in credit union business unless duly licenced under this Part of this Act.
- (2) The name of a credit union shall include –
 - (a) the words “credit union” the abbreviation “CU”; and
 - (b) an appropriate descriptive word or words, or an acronym made up of initials of the appropriate descriptive word or words and ending in “CU”, approved by the Reserve Bank.
- (3) Unless a credit union is formed by merger or consolidation, the Reserve Bank may –
 - (a) not issue a licence to the credit union; or
 - (b) approve the change of the name of the credit union,if the name to be adopted cannot be either identical to the name of any other financial institution operating in Tonga or so similar as to be misleading or cause confusion.
- (4) A person who is not a credit union authorised to do business in Tonga may not use a name or title containing the words “credit union” or any derivation of that term which -

- (a) indicates or reasonably implies that the person carries on or transacts the kind of business carried on or transacted by a credit union; or
 - (b) is calculated to lead a person to believe that the business being conducted is the type of business carried on or transacted by a credit union.
- (5) Any person who contravenes this section shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding three years or both.

9 Application for a licence

- (1) Ten (10) or more individuals may apply for a licence of a credit union under this Act if each is at least 18 years old.
- (2) The applicants shall file with the Reserve Bank -
- (a) an application in a form prescribed by the Reserve Bank; and
 - (b) filing fees required and set by the Reserve Bank.
- (3) An application for a licence of a credit union shall be made to the Reserve Bank in such form as may be specified by him and as provided in this Act and shall include two copies of the application, which shall state -
- (a) the name of the credit union and address of the principal place of business;
 - (b) a declaration of existence is perpetual and the fiscal year;
 - (c) the aggregate value of all initial shares;
 - (d) the name and address of, and the number of withdrawable and non-redeemable shares subscribed to by each applicant;
 - (e) the number of directors constituting the initial board and the name of each person who will serve as director until the first annual meeting;
 - (f) the definable community of interest shared by the members of the credit union;
 - (g) two copies of the bylaws for the general operation;
 - (h) a business plan covering three years and providing a detailed explanation of actions intended to accomplish the primary functions; and
 - (i) such other relevant information to the application as the Reserve Bank may prescribe.

10 Viability of credit union

No credit union may be licenced under this Act unless it is considered to be economically viable in the long-term by the Reserve Bank on the basis of the Reserve Bank's assessment of the following -

- (a) the demand for the proposed services;

- (b) the projected asset base of the credit union;
- (c) the membership size and growth potential of the credit union; and
- (d) the capacity of its leadership to provide competitive products and services on a sustainable basis.

11 Standard bylaws

- (1) To simplify the process of organising new credit unions, the Reserve Bank shall prepare standard bylaws.
- (2) The application forms shall be made available without charge to a person desiring to organise a credit union.

12 Decision on application for a licence and issuance of licence

An application to register a credit union shall be approved if the Reserve Bank determines -

- (a) that the applicants have complied with this Act and regulations issued under this Act;
- (b) from information furnished with the application, the results of any investigation and information in the Reserve Bank's official records, that –
 - (i) the character and general fitness of the applicants and the members of the initial board meet the requirements of section 37 and warrant belief that the credit union's business and affairs will be properly administered in accordance with this Act and regulations issued under this Act;
 - (ii) the character and size of the field of membership to be served by the credit union conform with this Act and rules issued under this Act and favour the credit union's economic viability; and
 - (iii) the applicants and the members of the initial board are acting in good faith and are making the application in accordance with the purposes of this Act;
- (c) the Reserve Bank shall consider the effect of overlapping fields of membership on the applicant credit union and existing credit unions doing business in Tonga and may consider the availability and adequacy of financial services in the local community and the effect that the opening of a credit union would have on the local community. As a condition of approval of the application, the Reserve Bank may require the applicant credit union to limit or eliminate overlaps, in accordance with the rules, to achieve the purposes of this Act and promote the welfare and stability of those credit unions;
- (d) within 60 days of receipt of the completed application, the Reserve Bank, by written notice shall approve or deny the application. The Reserve

Bank may make approval of an application conditional and shall include any conditions in the notice approving the application. If the Reserve Bank disapproves the application, he shall explain in writing his reasons for doing so;

- (e) a notice of the Reserve Bank approving or disapproving an application shall be promptly mailed to the applicants by registered or certified mail, and in the case of an approval notice shall be accompanied by -
 - (i) a licence; and
 - (ii) the approved bylaws; and
- (f) the Reserve Bank shall retain copies of the licence and the approved bylaws in the Reserve Bank's permanent files.

13 Appeal to the Supreme Court of Tonga

A person aggrieved by a decision of the Reserve Bank on an application to licence a credit union may obtain administrative and judicial review thereof as provided in section 160 of this Act.

14 Requirements for commencing business

- (1) Before it may incur any debt under section 55 or transact any business that is not incidental to its organisation, a credit union shall have -
 - (a) received paid-in shares or deposits of at least \$1,000;
 - (b) at least 10 members;
 - (c) fulfilled all agreements and conditions related to the approval of its application for registration and issuance of its licence;
 - (d) received written acknowledgement from the Reserve Bank that the Reserve Bank has no objection to the commencement of business by the credit union; and
 - (e) a business licence pursuant to the Business Licences Act (Cap 17.01).
- (2) The Reserve Bank may issue directives to implement this section and may prescribe additional requirements consistent with the objectives of this Act that a credit union shall meet before transacting business.

15 Deadline for commencing business

- (1) A credit union shall begin business within six months after the date of the order approving the credit union's application.
- (2) On request and for good cause shown, the Reserve Bank may grant a credit union that has not begun business within the time prescribed by subsection (1) a reasonable extension to provide an opportunity to overcome the cause of the delay.

- (3) The applicants may appeal a decision of the Reserve Bank refusing a request for an extension to the Supreme Court of Tonga, as provided in section 160.
- (4) The Reserve Bank may cancel the licence if a credit union does not begin business within the prescribed time.

16 Organisational costs

All costs in connection with the organisation of the credit union and preparation for opening for business may be paid only from funds provided by the applicants or others and may be reimbursed by the credit union only out of undivided earnings, after provision has been made for required reserves.

17 Relocation and additional places of business

The Reserve Bank shall pre-approve in writing a credit union's request to relocate its principle place of business or to establish and maintain, at locations other than its principal place of business, additional offices or service facilities that are reasonably necessary to provide services to the credit union's members.

18 Exemption from income tax

A credit union is exempt from income tax.

19 Laws against abuse of financial services

Each credit union shall comply with relevant anti-money laundering and combating terrorism financing legislation, as well as consumer protection laws.

DIVISION 2 - GENERAL PROVISIONS

20 Fees

- (1) The Reserve Bank shall establish and collect fees and charges from credit unions in order to cover its expenses associated with the licencing and examination of credit unions.
- (2) The fees established by the Reserve Bank shall be reasonable and restricted to the costs of licensing incurred in order to discharge the functions of the Reserve Bank in supervising credit unions under this Act.

21 Immunity from legal action

The Reserve Bank and other employees of the Reserve Bank shall not be held liable for damages based on actions taken in good faith in carrying out their official duties under this Act.

DIVISION 3 – MEMBERSHIP

22 Members

- (1) A person may be a member of a credit union if the person is an applicant of the credit union or any other person who –
 - (a) shares the definable community of interest stated in the bylaws;
 - (b) has paid a uniform entrance fee if required by the bylaws;
 - (c) has acquired at least one membership share and met any membership requirements established by the board; and
 - (d) has complied with any other requirement of the bylaws.
- (2) A person may also be a member of a credit union if the person is a member of the immediate family of a person who meets the requirements of subsection (1).
- (3) A cooperative society, association, or partnership may share the definable community of interest of a credit union only if it is composed primarily of individuals eligible for membership under subsection (1).
- (4) A company may share the definable community of interest if members of the credit union own at least 80 percent of the voting shares of the company and no non-member controls the company.
- (5) Employees of the credit union may also become members of the credit union regardless if they share the definable community of interest.
- (6) A credit union may –
 - (a) terminate or suspend a person's membership for good cause under the conditions and in accordance with the procedures provided in the bylaws; or
 - (b) continue providing any or all services to a member for good cause without terminating or suspending the person's membership,provided that subsection (6)(a) and (b) does not relieve the person from any outstanding obligations owed to the credit union.
- (7) Notwithstanding subsection (4), an individual's membership in a credit union shall not be terminated solely because the individual ceases to share the definable community of interest.
- (8) Two or more persons within the credit union's field of membership who have jointly subscribed for one or more share or deposit accounts under a joint account and who have complied with all membership requirements may each be admitted to membership.

23 Applications for membership

- (1) An application for membership shall be acted upon by the board of directors of a credit union or by a membership officer appointed by the board.
- (2) The record of the actions taken by a membership officer on applications shall be available to the board of directors for inspection at any time.
- (3) A person denied membership by a membership officer may appeal the denial to the board.

24 Meetings of members and voting.

- (1) Members of a credit union shall hold an annual meeting at the time and place and in the manner provided by the bylaws.
- (2) A special meeting of the members may be called by the members or the board of directors in the manner provided by the bylaws. A special meeting of the members may also be called by the Supervisory Committee in accordance with section 32 and by the Credit Committee in accordance with section 33.
- (3) For any decision requiring action by the members, each member may cast only one vote, regardless of the number of membership shares the member holds.
- (4) No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated in writing by the organisation's governing body to represent the organisation.
- (5) The board may authorise member voting by mail.
- (6) The credit union's bylaws may establish a minimum age requirement to vote.

25 Amendment of bylaws

- (1) If approved by a majority of the members present at a duly constituted annual or special meeting of the members, the membership may amend the by-laws of a credit union.
- (2) Unless the amendment is a standard bylaw adopted by the Reserve Bank, the amendment shall be submitted to the Reserve Bank for approval.
- (3) Within 60 days after the date notice of an amendment is received, the Reserve Bank shall approve or disapprove the application in writing. The Reserve Bank shall specify the reasons for disapproval.
- (4) An amendment other than a standard bylaw takes effect on the Reserve Bank's approval. The effective date of an amendment that is a standard bylaw shall be determined at the meeting of the members that approved the amendment.

26 Liability of members

The members of a credit union are not personally or individually liable for the payment of the credit union's debts in excess of the amount of their individual ownership shares.

DIVISION 4 - DIRECTORS, OFFICERS, AND COMMITTEES**27 Board of directors terms and duties**

- (1) Each credit union shall have a board of directors of at least five members but no more than seven members or such maximum number of members as the Reserve Bank may prescribe.
- (2) The membership of the credit union shall elect the directors from among the membership at the annual membership meeting in the manner provided by the bylaws. Each director shall hold office until a successor is appointed, unless the director's office becomes vacant in accordance with section 29.
- (3) Each director shall take and subscribe to an oath or affirmation that the director -
 - (a) will diligently and honestly perform the director's duties in administering the credit union's affairs;
 - (b) will not knowingly violate or willingly permit the violation of an applicable law;
 - (c) will exercise the care and diligence reasonable and necessary to administer the affairs of the credit union in a safe and sound manner; and
 - (d) understands that, although the board may delegate certain duties to officers, directors, committee members, or employees of the credit union, the board remains responsible for the performance of those duties.
- (4) The term of office for a director may not exceed three years, except that the terms shall be staggered so that an approximately equal number of terms expires each year. A director may serve no more than two consecutive terms but may be re-elected or re-appointed after an absence from the board of three years.
- (5) The board shall meet at least once each month. Minutes of all meetings shall be kept.
- (6) The presence of a majority of directors in office shall constitute a quorum, unless the bylaws require a greater number.
- (7) If provided in the bylaws, a director may participate in and act at any meeting of the board by means of electronic communications equipment through which all persons participating in the meeting can communicate with each other.
- (8) Participation in a meeting in the manner provided subsection (7) constitutes attendance at a meeting.

28 Duties of board

- (1) The board is responsible to the members of the credit union for the management of the business and affairs of the credit union.
- (2) Among other things, the board shall carry out the following duties, subject to the provisions of this Act -
 - (a) act upon applications for membership or to appoint one (1) or more membership officers to approve applications for membership under such conditions as the board prescribes;
 - (b) determine the interest rate or rates which shall be charged on loans;
 - (c) establish the policies of the credit union with respect to the granting of loans and the extending of lines of credit, including requirements for security on loans;
 - (d) approve any loans above the amount prescribed by the bylaws;
 - (e) establish risk-management policies for all major activities of the credit union, in particular, the lending, investments, liquidity and asset-liability management, accounting policies, and audit and internal control systems;
 - (f) establish different types or classes of shares;
 - (g) declare dividends on shares and share certificates in the manner and form as provided in the bylaws; and determine the interest rate or rates that will be paid on deposits and deposit certificates;
 - (h) have charge of the investment of funds, except that the board may designate an investment committee or any qualified professional to have charge of making investments under conditions established by the board;
 - (i) if needed, hire and fix the compensation of a General Manager and establish guidelines for the employment of such additional persons as are necessary to carry on the business of the credit union;
 - (j) approve an annual operating budget for the credit union, which shall include provision for the compensation of employees;
 - (k) authorise the conveyance of property;
 - (l) authorise contributions to civic, charitable or service organisations;
 - (m) borrow to carry on the functions of the credit union;
 - (n) designate a depository or depositories for the funds of the credit union;
 - (o) suspend any or all members of the credit or Supervisory committee for failure to implement board policies or otherwise perform their duties;
 - (p) appoint any special committees deemed necessary; and
 - (q) perform any other thing that is necessary and proper to carry out the purposes and powers of a credit union as set forth in this law, subject to regulations issued by the Reserve Bank.

29 Vacancies and removal

- (1) The office of a director becomes vacant where –
 - (a) the director dies;
 - (b) resigns;
 - (c) is removed;
 - (d) does not maintain the qualifications required to serve on the board. The office of a director may become vacant; or
 - (e) at the discretion of the board, the director has been absent from three consecutive board meetings.
- (2) Unless the bylaws provide otherwise, the remaining directors by majority vote shall fill a vacancy, regardless of whether the remaining directors constitute a quorum. A director elected by the board to fill a vacancy holds office until the next annual membership meeting, at which the position shall be filled for the remainder of the unexpired term by vote of the members.
- (3) A director may be removed from office according to the removal procedure provided by the bylaws.

30 Officers and executive committee of the board

- (1) At the annual organisational meeting of the board, the board shall elect from its membership a chairman and vice chairman of the board.
- (2) The chairman and vice chairman elected under subsection (1) -
 - (a) serve a one-year term or until a successor is elected and qualified; and
 - (b) perform the duties the bylaws prescribe.
- (3) The board shall also elect from its members or employ a financial officer and a secretary of the credit union.
- (4) The board may designate an executive committee to exercise collectively, between board meetings, authority specifically delegated by the board under conditions specified by the board. The executive committee shall consist of the chairman, the vice chairman, and one or more other members of the board. At each board meeting, the executive committee shall report to the board regarding any meeting held or action taken by the committee between board meetings.
- (5) The bylaws may establish a minimum age requirement to hold office or serve as a director in the credit union.

31 General Manager

- (1) The board may employ a General Manager of the credit union to whom it delegates the authority and responsibility for managing the credit union's day-to-day operations.

- (2) The General Manager may be a board member but may not be chairman, vice chairman, or secretary.
- (3) The General Manager, if one is employed, shall serve as the financial officer of the credit union, unless the board employs another person to serve as financial officer under section 30(3).
- (4) Subject to board guidelines, the General Manager shall appoint or employ, and may discharge, any officer or any employee that the General Manager considers necessary to operate the credit union.

32 Supervisory Committee

- (1) Every credit union shall have a Supervisory Committee which shall be elected by its members at the annual general meeting.
- (2) The Supervisory Committee shall consist of not less than three and no more than five members and it may fill vacancies in its own membership until the next annual general meeting, when successors shall be chosen.
- (3) A person who is a member of the board or the Credit Committee or who is an employee of the credit union shall not become a member of the Supervisory Committee.
- (4) The members of a Supervisory Committee shall hold office for such term as the bylaws provide.
- (5) The Supervisory Committee shall meet at least quarterly and detailed minutes of these meetings shall be kept and shall be available to the board. If provided in the bylaws, a committee member may participate in and act at any meeting of the committee by means of electronic communications equipment through which all persons participating in the meeting can communicate with each other.
- (6) Participation in a meeting in the manner provided in subsection (5) constitutes attendance at a meeting.
- (7) The Supervisory Committee shall -
 - (a) oversee the credit union's system of internal controls;
 - (b) monitor board compliance with this Act and regulations thereunder as well as bylaws and policies of the credit union;
 - (c) review the financial affairs of the credit union at least quarterly and, if deemed necessary by them, call a special meeting of the credit union for consideration of the report of the Supervisory Committee on its review;
 - (d) develop a policy on rotation of the auditor under section 40 or the committee under section 41 to ensure continued independence of the person or persons conducting the audit;
 - (e) propose an independent auditor, or members of the committee to conduct the audit, to the board in accordance with section 40 or section 41 as

- appropriate and provide for an annual audit in accordance with section 40 or 41;
- (f) review the performance of the auditor; and
 - (g) report to the board on any matter which, in their opinion, should be brought to the board's attention.
- (8) If the Supervisory Committee determines that an officer of the credit union has breached the credit union's system of internal controls, including policies or procedures, the committee may by unanimous vote suspend the officer and shall report to the members of the credit union on the suspension.
 - (9) If the Supervisory Committee becomes aware of any matter which, in their opinion, should be placed before the membership, the committee may by a majority vote call a special meeting of the membership to consider the matter.
 - (10) A member of the Supervisory Committee may be removed by a decision of the membership of the credit union at a special or general meeting.
 - (11) If the board suspends any or all members of the Supervisory Committee as provided in section 29, it shall call a special meeting of the membership to decide whether such members should be removed from the committee and to appoint new members as necessary.

33 Credit Committee

- (1) Every credit union shall have a Credit Committee which shall be elected by its members at the annual general meeting.
- (2) The Credit Committee shall consist of three members chosen from the membership of the credit union. The committee may fill any vacancy on the committee until the next annual general meeting, when successors shall be chosen.
- (3) The members of a Credit Committee shall hold office for such term as the bylaws provide.
- (4) A person who is a member of the board or Supervisory Committee or who is an employee of the credit union shall not become a member of the Credit Committee.
- (5) The Credit Committee shall meet at least once a month to consider applications for loans and other financing transactions, other than loans or financing transactions that are required to be approved by the board.
- (6) If provided in the bylaws, a committee member may participate in and act at any meeting of the committee by means of electronic communications equipment through which all persons participating in the meeting can communicate with each other.
- (7) Participation in a meeting in the manner provided in subsection (6) constitutes attendance at a meeting.

- (8) The Credit Committee may appoint and delegate to loan officers the authority to approve applications. Applications approved by the loan officers shall be reviewed by the Credit Committee at the monthly meetings. Minutes and reports of these meetings shall be kept and shall be available to the board.
- (9) If the board suspends any or all members of the Credit Committee as provided in section 28 (2)(p), it shall call a special meeting of the membership to decide whether such members should be removed from the committee and to appoint new members as necessary.

34 Disqualification of directors, committee members, and officers

Each director, committee member or officer of a credit union shall be fit and proper and shall be of good repute and shall meet the criteria established by the Reserve Bank regarding qualifications, experience and integrity; provided, however, that no person shall be regarded as a fit and proper person if the person -

- (a) has been convicted of a criminal offence involving dishonesty or breach of trust;
- (b) has been convicted under a law designed to prevent money-laundering, terrorist financing, or other financial crimes;
- (c) has been convicted of an offence carrying a sentence of 2 or more years;
- (d) has filed for bankruptcy or been declared bankrupt; or
- (e) has been suspended, removed or prohibited from serving as an officer or director of a financial institution by a Supervisory agency.

35 Conflicts of interest

- (1) While serving as a director, committee member, officer, or employee of a credit union, a person may not -
 - (a) participate, directly or indirectly, in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of any related member;
 - (b) be employed by, engage in, or own an interest in a business or professional activity that the person could reasonably expect to -
 - (i) require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union; or
 - (ii) impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.
- (2) While serving as a director, committee member, officer, or employee of a credit union, a person shall disclose to the board any interest that he may have in a matter coming before the credit union or its board and shall thereafter recuse himself from participation in the discussion or voting on that matter.

36 Compensation

A person may not receive compensation for serving as a director or committee member of a credit union, except for reimbursement for necessary expenses incurred in the performance of duties for the credit union. Persons employed as officers of a credit union may also serve as a director, so long as they do not constitute the majority of directors.

37 Directors, committee members, and officers

- (1) No person shall become a director, a committee member, a General Manager or an officer of a credit union without obtaining the prior approval of the Reserve Bank.
- (2) Each credit union shall notify the Reserve Bank of the proposed appointment of any individual to the board of directors or a committee or employment of any individual as the General Manager or an officer at least 5 days before such appointment or employment becomes effective.
- (3) The Reserve Bank shall issue a notice of disapproval if the individual to be appointed or employed does not meet the criteria established by the Reserve Bank pursuant to section 34.
- (4) The Reserve Bank may issue a notice of disapproval of the appointment of an individual to the board of directors of a credit union if the person already serves on the board of another credit union and the Reserve Bank believes that such service will present serious conflicts of interest or have adverse effects on competition in the provision of financial services.
- (5) In making these determinations, the Reserve Bank shall consider, among other things –
 - (a) whether the relevant credit unions are significant competitors; and
 - (b) whether they operate in the same geographical market.

Provided that where one of the credit unions is a new credit union, as defined in this Act, then the Reserve Bank may take into consideration whether any adverse effects are outweighed in the public interest by benefits provided by the interlocking director's service to the new credit union.

- (6) A credit union may not appoint any individual to the board of directors or a committee or employ any individual as a General Manager or an officer if the Reserve Bank issues a notice of disapproval with respect to that person.
- (7) Any credit union becoming aware of circumstances that indicate that any director, a committee member, a General Manager or an officer may not satisfy the criteria established by the Reserve Bank pursuant to section 40 shall notify the Reserve Bank. Any director, a committee member, a General Manager or an officer who falls within any of the disqualifications under section 40 shall discontinue to serve such positions.

- (8) The Reserve Bank for the purposes of subsection (7) may request or obtain any means information regarding any member of the board or any of the committees and direct the credit union, should such member fail to fulfil the applicable requirements under section 34 commits an offence.
- (9) The Reserve Bank may issue rules to implement this section.

DIVISION 5 - FINANCIAL STATEMENTS AND AUDITS

38 Books and records

Each credit union shall maintain books and records of its assets and liabilities and all transactions it undertakes for its own account or for that of a member. The books and records of a credit union shall be maintained at the principal office of the credit union.

39 Financial statements and financial year

- (1) Each credit union shall prepare financial statements for each financial year in accordance with internationally accepted accounting standards and in compliance with any specific requirements prescribed by the Reserve Bank in this regard.
- (2) The financial year of the credit union shall be determined by the board of the credit union. A credit union may change its financial year with the approval of the Reserve Bank.

40 Audits and auditor qualification

- (1) The Supervisory Committee of each credit union shall obtain an annual audit of the financial statements of the credit union, conducted by the auditor appointed in accordance with subsection (6).
- (2) Upon completion of the audit, the auditor shall report to a joint meeting of the board and the Supervisory Committee.
- (3) A copy of the audited financial statements shall be submitted to the Reserve Bank within 3 months of the financial year's end.
- (4) The audited financial statements shall be presented at the credit union's annual general meeting and made available to the members of the credit union within 3 months of the financial year's end.
- (5) The board or the Supervisory Committee of each credit union shall obtain a supplementary audit or examination whenever it considers it necessary or when required by the Reserve Bank.
- (6) The board of a credit union shall appoint an independent auditor with qualifications and experience acceptable to the Reserve Bank to perform the audits required under this section.

- (7) The Supervisory Committee of a credit union shall propose an auditor meeting the necessary qualifications and experience, together with proposed terms of engagement and remuneration of the auditor, to the board. If the board rejects the recommendation of the Supervisory Committee, the board shall provide a written explanation of its reasons for rejection to the Supervisory Committee and the Reserve Bank.
- (8) Prior to recommending an auditor to the board, the Supervisory Committee shall inform the Reserve Bank of the name and qualifications and experience of the proposed auditor.
- (9) Prior to changing the auditor, the Supervisory Committee shall inform the Reserve Bank in writing of the reasons for the change, and the name and qualifications and experience of the proposed new auditor.
- (10) An individual may not serve as the independent auditor of a credit union if -
 - (a) the individual is an official or employee of the credit union;
 - (b) the individual has a material direct or indirect financial interest in any closely held business investment with an official or employee of the credit union; or
 - (c) a situation, condition, or relationship exists that, in the opinion of the Reserve Bank, prevents the individual from performing the audit in an objective and independent manner.
- (11) If the Reserve Bank finds that the board is not complying with this section or a rule adopted thereunder, the Reserve Bank may appoint an independent auditor meeting the requirements of this section to perform the audit. The credit union shall pay the cost of the audit.
- (12) All audits shall be performed in accordance with the International Standards of Auditing.

41 Alternative optional audit procedure for small credit unions

- (1) As an alternative to the annual audit by an independent auditor described in section 40, and with the prior approval of the Reserve Bank, the board of a credit union with assets less than an amount established by a directive or prudential standard issued by the Reserve Bank as of the end of the last financial year may elect to have an annual audit performed by a committee as described in this section.
- (2) The committee shall consist of two or more persons who –
 - (a) are not directors, officers or employees of the credit union;
 - (b) do not have a material direct or indirect financial interest in any closely held business investment with a director, official or employee of the credit union; or
 - (c) in the opinion of the Reserve Bank, have a relevant background and are able to perform the audit in an objective and independent manner.

- (3) The board of a credit union shall appoint the committee members.
- (4) The Supervisory Committee of a credit union shall propose members of the committee meeting the qualifications of subsection (2) to the board. If the board rejects the recommendation of the Supervisory Committee, the board shall provide a written explanation of its reasons for rejection to the Supervisory Committee and the Reserve Bank.
- (5) Prior to recommending members of the committee to the board, the Supervisory Committee shall inform the Reserve Bank of the name and qualifications of the proposed members.
- (6) Prior to changing any member of the committee, the Supervisory Committee shall inform the Reserve Bank in writing of the reasons for the change, and the name and qualification of the proposed new member.
- (7) The committee shall present a written report of its annual audit to the board of directors of the credit union and to the Reserve Bank within 3 months of the end of its financial year; and shall present a copy to any member who makes a written request therefore within 30 days following the credit union's receipt of the request.
- (8) As used in this section, the term "audit" means a comprehensive review of the internal policies, procedures, and controls of the credit union and its compliance with them that is sufficient for the committee to reach a reasonable conclusion that the financial statements of the credit union fairly and accurately represent the condition of the credit union.

DIVISION 6 - CAPITAL, RESERVES AND LIQUIDITY

42 Reserves

- (1) Each credit union shall maintain a regular reserve comprised of transfers from net income.
- (2) The board of a credit union may establish other reserves whenever it determines the reserve to be necessary or appropriate.

43 Regular reserve allocations

- (1) Each credit union shall transfer 20 percent of the total of net income for each year to its regular reserve account.
- (2) The regular reserve shall belong to the credit union and shall be used to meet losses. In the event of a decrease in the reserve, the Reserve Bank may require additional transfers to the regular reserve above the amount required by subsection (1) until the amount of the loss has been restored to the reserve. The regular reserve may not be decreased without the prior written approval of the Reserve Bank or as provided by a directive issued by the Reserve Bank.

44 Capital requirement

- (1) Each credit union shall maintain a Capital to Asset ratio of at least 10 percent. The Capital to Asset ratio is calculated by dividing the capital of the credit union by its assets.
- (2) For purposes of the Capital to Asset ratio, “Capital” shall include disclosed non-distributable reserves other than revaluation reserves that are created or increased by appropriations of retained earnings, capital donations or other surpluses of the credit union. Ownership shares may be included in capital but only if they are fully paid, permanent and non-redeemable.
- (3) Complex credit unions and credit unions with over an amount in assets as prescribed by the Reserve Bank may be required by the Reserve Bank to perform the calculation of the capital ratio using risk-weighted assets.
- (4) A new credit union shall not be treated as in violation of this section so long as the new credit union is able to yearly meet the requirements of section 43 (1). As used in this section, the term “new credit union” means a credit union that has been in existence for less than 2 years and has assets of less than an amount established by a directive issued by the Reserve Bank as of the end of the last financial year.
- (5) The Reserve Bank shall issue prudential standards regarding the capital requirement, including but not limited to specifying the characteristics of a complex credit union and the assignment of risk weights to asset categories.
- (6) If the Reserve Bank determines that a credit union has insufficient capital necessary to shield against the risks, both on and off the balance sheet, arising from the business of that credit union, it shall direct the credit union to increase its capital to the level determined by the Reserve Bank to be sufficient.

45 Liquidity maintenance requirement

Each credit union shall maintain liquid assets at a level appropriate to its operations and in keeping with any prudential standards issued by the Reserve Bank.

PART IV - ADMINISTRATION OF CREDIT UNION**DIVISION 1 - POWERS OF CREDIT UNION****46 General powers and incidental powers**

- (1) A credit union may exercise any power necessary or appropriate to accomplish the purposes for which it is organised, including any power specified in this Act.

- (2) In addition, a credit union may exercise any right, privilege, or incidental power necessary or appropriate to exercise its specific powers and to accomplish the purposes for which it is organised.
- (3) A credit union shall not have the power to engage in any business activity except as specifically authorised by this Act or by the Reserve Bank in the licensing procedure as permissible for a credit union to accomplish the purposes for which it is organized.

47 Perpetual existence, power to enter into contracts and power to sue and to defend

A credit union shall have perpetual succession; it shall be authorised to enter into contracts; and it may sue and be sued in its own name.

48 Purchase and sale of property

- (1) Subject to such prudential standards as may be issued by the Reserve Bank, a credit union may –
 - (a) purchase, hold or lease only such real property as may be necessary for its use as credit union premises; or as it may acquire in the process of collecting loans; and
 - (b) purchase, hold or lease such personal property as may be necessary or incidental to the operation of the credit union.
- (2) A credit union shall not invest in credit union premises, directly or indirectly, in an amount that exceeds its capital, provided however that, with the prior approval of the Reserve Bank, and upon having demonstrated to the Reserve Bank's satisfaction an urgent need therefore, such limit may be increased to 150 percent of the credit union's capital.
- (3) Real property acquired by the credit union in the process of collecting loans shall be disposed of as soon as possible but in any event within five years from the date on which the credit union acquired such interest.

49 Membership in a credit union league and operation as central credit union

- (1) A credit union may be a member of –
 - (a) another credit union organised under this Act; and
 - (b) the credit union league established pursuant to section 153 of this Act.
- (2) With the prior approval of the Reserve Bank, a credit union may operate as a credit union league to accumulate and manage prudently the liquidity of its member credit unions.

- (3) A credit union league shall be subject to all the provisions of this Act, unless the Reserve Bank, in order to permit the credit union league to carry out its purpose, specifically exempts the credit union league from a specific provision or determines that a provision should be applied in a modified form.

DIVISION 2 - SHARE ACCOUNTS, DEPOSIT ACCOUNTS AND BORROWINGS

50 Membership shares

- (1) A credit union may offer an unlimited amount of membership shares at a par value established in the bylaws.
- (2) The bylaws of a credit union shall fix the minimum number of membership shares to which a member shall subscribe and may limit the number of shares that may be owned by a member, but any such limitation shall be applied equally to all members.
- (3) Payment on membership shares shall be made as provided in the bylaws, which may permit instalment payment for shares.
- (4) Shares may be issued in different classes, with different rates of dividend payment; and they may be redeemable or nonredeemable. Nonredeemable shares may be nonredeemable for a term of years or they may be permanent nonredeemable shares. Redeemable shares may be redeemed at any time, subject to any applicable requirement for advance notice of withdrawal. Redemption will not terminate the owner's membership in the credit union, so long as the member retains ownership of the number of shares needed to qualify as a member.
- (5) Shares may be issued in certificate form or they may be held in an account on the books of the credit union.
- (6) A joint share account may hold more than one membership share and may support membership for more than one member of the credit union.

51 Authority to mobilise deposits

A credit union may receive deposits from members, registered cooperatives and other credit unions in demand, savings or fixed-term accounts. A credit union may, with the prior approval of the Reserve Bank, offer checking accounts to its members. The terms, interest rates and conditions under which deposits are accepted shall be established by the board of directors and shall be set forth in agreements between the credit union and its depositors.

52 Dividends and interest

- (1) A credit union may –
 - (a) declare and pay dividends on its shares;
 - (b) pay interest on deposits; and
 - (c) pay patronage rebates.
- (2) A dividend or interest payment shall be made at such rates and under such conditions as the board may authorise.
- (3) A dividend may be paid only after any transfer to reserves that is required under section 42 has been made.
- (4) The Reserve Bank may restrict the payment of a dividend -
 - (a) if the Reserve Bank restricts such payment pursuant to an enforcement action taken pursuant to section 100;
 - (b) if payment of the dividend would cause the credit union to fall below the capital requirement of section 44; or
 - (c) as necessary to protect the interests of members and to preserve the solvency of the credit union.
- (5) A credit union shall obtain the written approval of the Reserve Bank prior to paying dividends in any calendar year in which the credit union suffers a net loss or in which the dividend would be in excess of the amount of the credit union's net profit for that year.

53 Account withdrawals

- (1) A credit union may not require more than 60 days advance notice for a withdrawal from a share or deposit account.
- (2) The Reserve Bank may impose an advance withdrawal notice requirement following issuance of an enforcement action taken pursuant to section 100.
- (3) The Reserve Bank shall require that any requirement imposed under subsection (2) shall apply to all members of the credit union.

54 Receipt, transfer, and payment of money

- (1) A credit union may –
 - (a) receive money, including payments on shares or money for deposit;
 - (b) disburse money; and
 - (c) provide for the transfer or withdrawal of money from an account by the means and through the payment systems that the board determines best serve the convenience and needs of members.
- (2) A credit union may also –

- (a) accept money for deposit from a bank, an insurance company, or any other intermediary holding money on behalf of the credit union or one of its members;
- (b) accept grants or donations of money from national or international development agencies or other donors;
- (c) sell to a member negotiable checks, money orders, and other similar money transfer instruments or services; and
- (d) cash checks or money orders for a member for a fee.

55 Reserve Bank's approval for borrowings required

A credit union may incur debt only with the Reserve Bank's written approval. The Reserve Bank may issue prudential standards regarding such borrowings.

DIVISION 3 - MULTIPLE-PARTY ACCOUNTS

56 Form of account

A member of a credit union may designate one or more persons to own a share or deposit account with the member in a multiple-party account. The account may provide for rights of survivorship.

57 Powers of account holders

- (1) A party to a multiple-party account may make a payment on a share or deposit account and a withdrawal subject to the account agreement.
- (2) A party to the account may not vote in matters pertaining to, obtain a loan through, or hold office in the credit union unless such party is a member of the credit union.

58 Ownership interest

The parties to a multiple-party account are presumed to own the account in equal undivided interests.

59 Discharge of liability on payment

Payment of part or all of a multiple-party account to a party to the account discharges the credit union's liability to each party to such account to the extent of the payment.

60 Division of account on death

Unless otherwise provided by the account agreement or a trust agreement, the only effect that the death of a party to a multiple-party account has on the beneficial ownership of the account is to transfer the deceased's right in the account to the deceased's estate.

DIVISION 4 - ACCOUNTS OF MINORS**61 Powers of credit union relating to account**

A credit union may open a share or deposit account in the name of a minor otherwise eligible for membership and conduct all payments, withdrawals or other matters with respect to the account.

62 Voting office-holding

If permitted by the credit union's bylaws, a minor may vote in a meeting of the credit union's members; and is eligible to hold an office or committee membership in the credit union.

63 Discharge of liability on payment

- (1) A payment or delivery of rights made by a credit union to any of the following persons in connection with an account in the name of a minor discharges the credit union to the extent of the payment or delivery -
 - (a) to the minor;
 - (b) to a party to the account; or
 - (c) to the parent or guardian of a deceased minor.
- (2) The payment and a receipt, or other action required by the credit union is binding on the minor as if the minor had the capacity of an adult.

DIVISION 5 - LOANS AND INVESTMENTS**64 Power to lend**

A credit union may lend its funds to its members, or engage with them in any other type of secured or unsecured financing transaction authorised by prudential standards issued by the Reserve Bank. All such loans and financing transactions shall be for purposes approved by the credit union. Extensions of credit to non-members are not permitted, except as provided in section 80.

65 Limitations on loans

- (1) A credit union may not make a loan to a 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 –
 - (a) 10 percent of the credit union's capital; or
 - (b) such lesser amount as may be established by a prudential standard issued by the Reserve Bank.
- (2) A credit union or its officers, directors, or employees may not make or grant any loan or gratuity to any employee of the Reserve Bank who has authority to examine or otherwise supervise such credit union.
- (3) A credit union that violates subsection (2) shall be subject to a fine not exceeding \$10,000.
- (4) For purposes of this section, a loan shall include any obligations of a member as co-maker, guarantor, or endorser.

66 Interest rates and fees for secured and unsecured loans

- (1) For the purposes of this Act, after taking into consideration the credit unions' cost of funds, profit margin, borrower's credit risk, administrative costs and other loan related costs, the interest rate of a loan whether secured or unsecured shall be linked to the policy rate set by the Reserve Bank from time to time.
- (2) A loan agreement may impose a default interest fee and default payment fee not exceeding an amount as prescribed by the Reserve Bank.
- (3) The maximum annual percentage rate which may be charged by a credit union shall not exceed the rate prescribed by the Reserve Bank.
- (4) In calculating instalment payments for credit transactions, the credit union shall use the Declining Balance Calculation Method and the interest shall be compounded on a monthly basis.
- (5) Notwithstanding subsections (1) and (2), interest and fees shall not at any time be recoverable by a credit union of an amount in excess of the sum then due as principal unless a Court, having regard to all the circumstances, otherwise decrees.
- (6) Where in a loan agreement the interest charged for a secured loan or an unsecured loan, as the case may be, is more than that specified in subsections (1) and (2), that agreement is void and unenforceable.
- (7) Where in a loan agreement the securities are realised, the credit union shall realise the securities at the current market value for the repayment of a loan and any excess money shall be paid to the borrower.
- (8) A credit union who contravenes this section is liable to a fine not exceeding \$10,000.

67 Written agreement required

A credit union loan shall be evidenced by a written agreement and is furthermore subject to any requirements as prescribed by the Reserve Bank or any applicable laws or regulations.

68 Line of credit

A credit union may approve in advance a line of credit and grant advances to a member within the limit of the line of credit.

69 Tie in provisions prohibited

It shall be unlawful for a credit union to demand from a potential borrower, in consideration of obtaining a loan, that –

- (a) additional services, such as appraisal, valuations or insurance coverage, be acquired from a specific provider; or
- (b) require that the borrower utilise other services of the credit union other than a deposit account.

DIVISION 6 - TRANSACTIONS WITH DIRECTORS, OFFICERS, EMPLOYEES, AND COMMITTEE MEMBERS**70 Additional requirements for loans to directors, officers, senior management employees, and committee members**

- (1) A loan to a director, officer, senior management employee, or committee member –
 - (a) shall comply with this Act and prudential standards issued by the Reserve Bank under this Act with respect to loans to other borrowers;
 - (b) may not be on terms more favourable than those extended to other borrowers;
 - (c) shall be approved by the board before the credit union makes or agrees to make the loan, regardless of the amount of the loan; and
 - (d) shall, when combined with all other outstanding loans to such persons, such persons' business interests, and such persons' immediate families, not exceed 20 percent of the credit union's capital.
- (2) For purposes of this section, a loan to a director, officer, senior management employee, or committee member shall include any obligations of such persons as co-borrower or guarantor, as authorised under section 71.

71 Authorisation to act as borrower or guarantor

The board shall give its approval before the credit union permits a director, officer, senior management employee, or committee member to act as borrower or guarantor of any loan to a member, regardless of the amount of the loan.

72 Purchases of assets and services from insiders

A credit union may purchase assets or obtain services from, or sell assets to, its directors, officers, senior management employees and committee members only upon terms that are no less favourable to the credit union than the terms on which such assets or services could be obtained by the credit union in arm's length transactions with other persons.

DIVISION 7 - OTHER PROVISIONS ON LOANS**73 Borrower payment of loan expenses**

A credit union may require a member to pay all reasonable expenses and fees incurred in connection with making, closing, disbursing, extending, readjusting, or renewing a loan, whether or not those expenses or fees are paid to third parties.

74 Prepayment privilege

A loan may be prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business. The right of prepayment shall be reflected in the written agreement required under section 67.

75 Penalty for late payment

- (1) A credit union, in accordance with its bylaws, may charge a member a penalty when a loan payment is past due subject to section 66 (2).
- (2) A credit union may charge only one penalty on each past due payment.
- (3) This section does not prevent the continuing accrual of interest on a past due payment in accordance with the terms of the loan.

76 Liens and setoffs

To the extent of a member's direct or indirect indebtedness to a credit union, the credit union has –

- (a) a lien on the member's shares and deposits, accumulated dividends, and interest; and

- (b) a right to set off against the member's shares, deposits, accumulated dividends, and interest.

77 Allowance for loan losses

- (1) At least quarterly, the board of a credit union shall evaluate the quality and collectability of the loan portfolio and establish an adequate loan loss allowance.
- (2) The Reserve Bank may issue prudential standards to implement the requirement for an adequate loan loss allowance.

78 Treatment of loans and other assets

- (1) A credit union may not report as an asset any obligation or security which it does not own absolutely or which is known by the credit union to be fraudulent or otherwise worthless.
- (2) A credit union may not report as an asset, any obligation which is past due or upon which no interest has been paid for 3 years or longer or such shorter period of time as may be prescribed by the Reserve Bank under section 77.
- (3) Past due loans may be reported as assets to the extent of the reasonable value of any lien or other collateral given to secure such obligation.
- (4) If a past due loan is in the process of collection, it may be reported at its reasonable value as determined by the board of directors.
- (5) The Reserve Bank may order the revision of any value determined by the board under subsection (4).
- (6) The requirements of this section apply to the reporting of assets in a credit union's financial statements and in any report required to be filed with the Reserve Bank.
- (7) The Reserve Bank may issue directives, notices or prudential standards to implement the requirements of this section.

DIVISION 8 - INVESTMENTS AND LOANS TO CERTAIN ORGANISATIONS

79 Permitted investments

- (1) A credit union may invest money in –
 - (a) obligations, bonds, notes, or other evidences of indebtedness of the Government;
 - (b) certificates of deposit or other accounts issued by a bank, or any other deposit taking financial institution;

- (c) shares of, or deposits in another credit union, a central credit union, a corporate credit union, a central liquidity facility established under law, or an organisation established for lending directly or collectively to credit unions; and
 - (d) such other investments as the Reserve Bank may, through prudential standards authorise for this purpose.
- (2) Equity investments shall not be allowed in any amount.

80 Loans to the credit union league

- (1) Subject to the limitations of this section, a credit union may make –
- (a) loans to the credit union league established pursuant to section 153 of this Act; and
 - (b) loans to another credit union, a corporate credit union, a central liquidity facility established under law, or an organisation established for lending directly or collectively to credit unions.
- (2) Loans under subsection (1)(a) may not exceed 5 percent of the credit union's total assets.

DIVISION 9 - OTHER FINANCIAL SERVICES

81 Insurance for members

A credit union may purchase or otherwise provide one or more group insurance policies for the benefit or convenience of its members, and it may act as agent or broker in connection with the sale of individual insurance policies to members, all in accordance with applicable law or regulations.

82 Electronic transfers

With the prior written approval of the Reserve Bank, a credit union may establish, operate, or participate in a system that allows the transfer of credit union money or deposits of its members by electronic or other means, including a clearinghouse association, a data processing or other electronic network.

83 Electronic banking

- (1) With the prior approval of the Reserve Bank and subject to any conditions that the Reserve Bank may impose, a credit union may offer permissible financial services to its members and other customers through the use of computers, the internet and other electronic means. The Reserve Bank shall authorise the provision of electronic banking services only if he is satisfied that the credit union seeking to provide such services will do so in a manner that –

- (a) is consistent with safe and sound credit union practices;
 - (b) provides adequate security to members and other customers, the credit union itself and to others;
 - (c) protects the privacy of members and other customers; and
 - (d) does not prejudice the interests of members and other customers.
- (2) The Reserve Bank may issue directives, notices or prudential standards regarding the provision of electronic banking services by credit unions.

84 Rental of safe deposit boxes

A credit union may maintain and rent safe deposit boxes. The Reserve Bank may issue directives, notices or prudential standards regarding this activity.

85 Other financial services

- (1) With the prior approval of the Reserve Bank, and subject to any conditions that the Reserve Bank may impose, a credit union may provide other financial services to its members, as provided in this section.
- (2) In considering whether to authorise one credit union, or credit unions generally, to engage in a particular activity, the Reserve Bank shall consider whether the activity –
- (a) may be performed consistently with safe and sound credit union practices, and whether its performance will advance the purposes for which credit unions are formed;
 - (b) is performed by similar credit unions in comparable foreign jurisdictions; and
 - (c) may be satisfactorily supervised both by the board of directors of the credit union itself and also by the Reserve Bank.
- (3) The Reserve Bank shall determine its decision in writing regarding these issues, as well as the facts and reasons supporting its decision.
- (4) A credit union licenced under this Act may provide its lending and deposit services only to members; however, taking into consideration the needs and convenience of the relevant community, the Reserve Bank may authorise a credit union to provide the other financial services referred to in this section to non-members, provided that business conducted with non-members shall not comprise a major portion of the credit union's business.

DIVISION 10 - MISCELLANEOUS AUTHORITIES AND RESTRICTIONS**86 Fees**

A credit union may collect fees for services provided and to cover administrative costs, including a fee for a cheque or draft that is returned because it is drawn against a closed account or an account containing insufficient or uncollected money, because of a stop payment order, or for another similar reason.

87 Third-party claim

- (1) A credit union doing business in Tonga shall be served with a judgment, order or other appropriate process issued from a court in connection with a suit instituted by a third party to recover or establish an interest in a deposit or share account before the credit union is required to –
 - (a) recognise the third party's claim;
 - (b) withhold payment of the account to any party to the account; or
 - (c) withhold payment to the order of any party to the account.
- (2) A claim against a depositor, joint account owner, or member of a credit union shall be delivered or otherwise served as required or permitted by law at the address of the registered agent of the credit union.

88 Dormant accounts

- (1) If there has been no activity on a member's redeemable share or deposit account for two or more years, the board of directors may impose a reasonable maintenance fee on it.
- (2) The credit union shall give notice of this action to the member at the last known address, allowing at least thirty days for a reply.
- (3) Any such maintenance fee may be fixed at a rate that covers administrative costs, but may not reduce a member's interest in the credit union below one ownership share.
- (4) The credit union shall maintain a separate accounting record of all such accounts.

89 Abandoned property

- (1) Redeemable share and deposit accounts, dividends, interest and other sums due a member and held by the credit union may be presumed to be abandoned unless the owner has contacted the credit union in writing or in person within seven years.

- (2) The board of directors may credit the abandoned funds to a special reserve fund and discontinue payment of dividends or interest.
- (3) The credit union shall send a notice of this action to the member to whom the property is owing, at the last address shown on the credit union's records and allow 30 days for a response.
- (4) After 5 years in the special reserve fund, the credit union shall dispose of the property as provided in the jurisdiction's administration laws; if the jurisdiction has no administration laws, then the property shall be donated to a recognised charity selected by the board of directors.

90 General prohibitions

Credit unions shall not –

- (a) engage in commercial activities, including but not limited to, manufacturing, wholesale or retail trade, transportation, agriculture, mining, construction or fisheries;
- (b) engage in the businesses of underwriting securities, acting as principal or agent in connection with the sale of securities, underwriting insurance, developing real estate or acting as agent in connection with the sale of real estate;
- (c) allow their offices to be used by third parties for any activity that is prohibited to the credit union;
- (d) engage, sponsor or otherwise participate in lotteries, races, games or betting activities;
- (e) contribute to any political party or political campaign; or
- (f) donate monies or other property to another credit union except as may be permitted by the Reserve Bank.

91 Divestiture of non-conforming investments

- (1)
 - (a) A credit union that, on the day that this law takes effect, holds assets or investments that are not eligible to be held by a credit union, including real estate that has been held for more than the five year period permitted under section 48, or that engages in activities that are not authorised to be engaged in by a credit union, shall divest itself of those assets or investments, and terminate those activities, by a date no later than 12 months after the date on which this law becomes effective.
 - (b) The Reserve Bank may, in his sole discretion, extend the time period for divestiture or termination of activities for two successive one-year periods, provided that it is satisfied that –

- (i) the credit union has made diligent efforts to divest, sell or terminate the assets or activities in question; and
 - (ii) that a refusal to extend the time period would cause undue hardship to the credit union or to others. In no event shall the time period for divestiture or termination exceed three years from the date of enactment of this Act.
 - (c) In the event that the divestiture or termination of activities required by this section has not been effected at the end of the 3 year period following enactment of this Act, then the Reserve Bank shall appoint an independent trustee who shall be charged with authority, acting at the direction of the Reserve Bank, to effect the divestiture or termination of activities on behalf of, and at the expense of, the credit union. The trustee shall pay over to the credit union any proceeds from the divestiture or termination of activities, less any costs of sale or termination, and less any expenses of the trustee. In the event that divestiture or termination results in a deficit, then that deficit, any expenses of the divestiture or termination, and any expenses of the trustee, shall be borne by the credit union.
 - (d) A divestiture shall not be considered to have complied with the requirements of this section if the transfer is financed by the credit union or is made to a company controlled by the credit union. Any transfers of assets or activities by the credit union to directors, management officials, or employees of the credit union, or to companies controlled by such persons, shall be made in compliance with the requirement for arms-length dealing, and other applicable requirements, of sections 70 to 72 of this Act.
- (2) Notwithstanding the provisions of subsection (1) of this section, the Reserve Bank shall be authorised, in its sole discretion and in exceptional cases, and acting at the request of a credit union, to permit retention by the credit union of non-conforming assets or investments or the continuation of non-conforming activities.
- (3) In determining whether to authorise retention or continuation, the Reserve Bank shall consider, among other things, whether such retention or continuation –
- (a) is consistent with safe and sound credit union practices;
 - (b) presents undue risks or demands on managerial resources;
 - (c) may be subject to adequate prudential supervision by the Reserve Bank; and
 - (d) such other matters as it determines to be relevant.
- (4) The Reserve Bank may also consider whether divestiture or termination would cause undue hardship to the credit union. If the Reserve Bank determines to approve retention or continuation, the Reserve Bank may make such authority to retain subject to such conditions as it sees fit.

PART V - SUPERVISION AND REGULATION

92 Issuance of prudential standards

- (1) The Reserve Bank may issue prudential standards to implement this Act and carry out its objective. The presence or absence of a specific reference to prudential standards regarding a particular subject does not enlarge or diminish the authority to promulgate prudential standards provided by this section.
- (2) Prior to adoption in final form, all prudential standards shall be made available through publication in the Reserve Bank website for review and comment by the public for a period of at least 30 days. Any interested person may submit comments to the Reserve Bank thereon during the comment period, which comments shall be taken into consideration by the Reserve Bank in the formulation of the prudential standard in final form. The final prudential standard shall also be published in the Reserve Bank website together with a description of substantive comments received by the Reserve Bank during the comment period and the disposition made of them. The final prudential standard shall specify the date on which it shall take effect.
- (3) In emergency situations where immediate action is required, the period provided for public comment in subsection (2) of this section may be dispensed with and the prudential standard may take effect immediately upon notice to credit unions and other affected parties.
- (4) Notice under subsection (3) may be accomplished by publication in the Reserve Bank website of the text of the prudential standard together with a description of the circumstances that required the public comment period to be dispensed with, or by any other reasonable means as determined by the Reserve Bank.

93 Examinations

- (1) The Reserve Bank shall examine the affairs of each credit union licenced under this Act at periodic intervals. The periodic interval for each credit union shall be determined based on the size and complexity of the credit union and the risks that it presents.
- (2) The Reserve Bank may conduct a special examination of a credit union at any time that the Reserve Bank has reason to believe that the credit union is engaging in an unsafe and unsound practice, its financial condition is deteriorating, or the credit union is in violation of this Act or the prudential standards thereunder.

94 Access to information

The Reserve Bank may require any director, committee member, officer or employee of a credit union to provide access to all books, records, accounts, cash in hand, data,

documents and other papers held, stored or transmitted by the credit union, whether in physical or electronic form. Any information deemed necessary and requested by the examiner shall be furnished in a timely manner during the course of the examination.

95 Witnesses and production of documents

In an examination conducted under this part, the Reserve Bank may -

- (a) conduct the examination with or without notice;
- (b) require explanations and the production of books, accounts and documents and such information as may be required to conduct the examination;
- (c) make copies of and take any papers or electronically stored data from the credit union's premises; and
- (d) require that copies of documents be certified as "true" copies of the originals retained by the credit union.

96 Report of examination

An examiner shall report the results of an examination, including a general statement of the credit union's affairs, on a form prescribed by the Reserve Bank.

97 Examination of related entities

The Reserve Bank may examine, to the same extent as if the services or activities were performed by a credit union on its own premises -

- (a) a credit union service organisation in which a credit union has a material interest; and
- (b) a third-party contractor providing electronic data processing, electronic fund transfers, or other member services on behalf of a credit union.

98 Reports

- (1) Each credit union shall submit to the Reserve Bank a quarterly report of its financial condition and such other reports as the Reserve Bank may require to monitor its compliance with other requirements of this Act, regulations, directives, notices or prudential standards thereunder.
- (2) The Reserve Bank may require credit unions generally, or, if the Reserve Bank determines this to be required for Supervisory purposes, individual credit unions, to file reports under this section more frequently than quarterly.
- (3) Each report shall be in the form and containing the information that the Reserve Bank may prescribe.

- (4) The credit union shall submit the report on or before the due date prescribed by the Reserve Bank.
- (5) If a credit union does not submit a report by the due date or files an inaccurate or incomplete report, a late fee may be charged. The fee shall be payable to the Reserve Bank and shall be in an amount set by the Reserve Bank for each day after the due date that the report remains unfiled or each day after a subsequent due date established by the Reserve Bank in a notice to a credit union to correct an inaccurate or incomplete report. The Reserve Bank may waive all or part of the late fee.

99 Determination of misconduct.

The Reserve Bank may, in addition to any other course of action available under this Act or any other law, take any action set forth in section 100 against a credit union or its directors, committee members, officers or employees where the Reserve Bank is of the opinion, either as a result of an examination carried out pursuant to Section 93 or otherwise, that the credit union itself or its directors, committee members, officers or employees –

- (a) violated this Act, a prudential standard, directive or notice issued under this Act, or another law applicable to a credit union;
- (b) violated or refused to comply with a final order of the Reserve Bank;
- (c) wilfully neglected to perform an official or legal duty or wilfully committed a breach of trust or fiduciary duty;
- (d) committed a fraudulent or unlawful practice in the conduct of the credit union's business that endangers the credit union's reputation or threatens its solvency;
- (e) refused to submit to examination or to permit examination of the credit union's records and affairs by the Reserve Bank;
- (f) failed or refused to authorise and direct another person to permit the Reserve Bank to examine the credit union's records in the other person's custody after the Reserve Bank has requested the authorisation of and direction to the other person;
- (g) conducted the credit union's business in an unsafe, unauthorised, or unlawful manner, or is engaged in an unsafe and unsound practice;
- (h) concealed, destroyed, removed, or falsified a record related to the credit union's business and affairs;
- (i) transacted business while the credit union was in an unsafe or unsound condition;
- (j) violated a condition of the credit union's bylaws or of a written agreement with the Reserve Bank; or
- (k) committed a criminal act that is a substantial detriment to the reputation and conduct of the credit union's business.

100 Enforcement actions

- (1) The actions that the Reserve Bank may take referred to in section 99 include –
 - (a) issue written warnings;
 - (b) impose an administrative penalty on the credit union or the directors, committee members, officers and employees of the credit union pursuant to section 159 of this Act;
 - (c) issue an order to cease and desist from such practice, contravention or non-compliance;
 - (d) issue an order to require the credit union to comply with the whole or part of this Act, regulation, directives, notices or prudential statements;
 - (e) conclude a written agreement with the board of directors providing for a program of remedial action;
 - (f) issue an order to remove or suspend the person from his position;
 - (g) appoint a controller in accordance with section 111 if the grounds for controllership provided in section 111 (1) are met;
 - (h) revoke the licence;
 - (i) removal, dismissal or suspension of any of the directors, committee members, officers and employees of the credit union; and
 - (i) to take any other action necessary for correcting the ground of such action.
- (2) The measures and penalties provided in this Section shall not preclude application of other civil penalties or criminal penalties as provided under applicable law.
- (3) The action that the Reserve Bank takes pursuant to subsection (1) shall be proportionate to the misconduct of the credit union or of its directors, committee members, officers or employees.
- (4) Warnings, orders, agreements or other documents specifying the action to be taken against a credit union shall –
 - (a) be in writing;
 - (b) be served; and
 - (c) state the effective date of the action.

101 Hearing on appeal of enforcement actions.

- (1) A credit union or a director, committee member, officer or employee who is charged with an enforcement action provided in section 100 may obtain administrative or judicial review of the Reserve Bank's action in accordance with the procedures set out in section 160, except that such review shall be initiated within 10 days following service of the order. Enforcement actions

with respect to which review is not sought within the time period stated in this section shall be final and incontestable.

- (2) The filing of a request for such review shall not suspend an enforcement action.

102 Publication of final orders.

The Reserve Bank shall release the final order of an enforcement action to the public, unless the Reserve Bank, in its discretion, determines that publication would be detrimental to the stability of the financial system or to other public interests.

PART VI – CONFIDENTIALITY

103 Confidentiality of information of the Reserve Bank.

- (1) Subject to section 19 of the National Reserve Bank Act of Tonga (Cap 16.12), the following information of the Reserve Bank is confidential and may not be disclosed by any employee except as provided in this section –
 - (a) information obtained directly or indirectly by the Reserve Bank in any manner, including by application or examination, concerning the financial condition or business affairs of a credit union, its related entities, and its members and other customers, and the files and records of the Reserve Bank relating to that information, except a statement that is public or intended for publication;
 - (b) a report of examination;
 - (c) a document related to an enforcement action taken pursuant to section 100 whereby the Reserve Bank determines that publication would be contrary to the stability of the financial system or to other public interests; and
 - (d) information obtained by the Reserve Bank from another Supervisory agency that is designated as confidential by that agency.
- (2) Confidential information under subsection (1) may be disclosed by the Reserve Bank or any other employee or agent of the Reserve Bank -
 - (a) to defend an action instituted by a credit union or its member against the Reserve Bank;
 - (b) to prosecute an enforcement proceeding in accordance with this Act;
 - (c) pursuant to a court order, subpoena or other legal process;
 - (d) to the financial intelligence unit and other appropriate competent authorities responsible for laws governing money laundering or financing of terrorism;
 - (e) to any other Supervisory agency pursuant to an agreement or arrangement for the sharing of confidential information;

- (f) if the information is otherwise public; or
 - (g) pursuant to any provision of law that imposes a specific duty on the Reserve Bank to disclose the information.
- (3) Discovery of confidential information from the Reserve Bank under a court order, subpoena or other legal process may –
- (a) restrict release of confidential information to the portion directly relevant to the legal dispute at issue; and
 - (b) require that a protective order, in a form and under circumstances specified by the rules, be issued by a court before release of the confidential information.

104 Disclosure of records of member and confidentiality.

- (1) A credit union shall not disclose or produce to a third party or permit a third party to examine a record pertaining to the affairs of a credit union member unless –
- (a) the request is made in connection with an audit of the credit union;
 - (b) the member consents to the disclosure or production of the record;
 - (c) the information is required by the Reserve Bank;
 - (d) the request is made in response to –
 - (i) a subpoena or other court order; or
 - (ii) an administrative subpoena or summons issued by a government agency as authorised by law; or
 - (e) the disclosure is made under rules and procedures established by the Reserve Bank under subsection (2).
- (2) The Reserve Bank may issue prudential standards that permit the exchange of information on –
- (a) customers' indebtedness to provide data for determining the soundness of credit;
 - (b) bad cheques; or
 - (c) any other transaction for which the Reserve Bank determines that disclosure is necessary in the daily operation of the credit union's business.

PART VII - MERGER AND CONSOLIDATION TRANSACTIONS

105 Authority to merge or consolidate

A credit union may merge or consolidate with another credit union, under the credit union's existing bylaws, if –

- (a) the merger or consolidation transaction is in accordance with the Reserve Bank's prudential standards and approved by the Reserve Bank; and
- (b) the merger or consolidation transaction takes place under a plan of merger or consolidation that has been –
 - (i) agreed to by a majority of the board of each credit union joining in the merger or consolidation; and
 - (ii) approved by a majority of the members of each credit union voting at a meeting of its members called for that purpose.

106 Application to merge or consolidate

- (1) After agreement by the directors and approval by the members, if applicable, of each credit union, the chairman and secretary of each credit union shall execute a certificate of merger or consolidation as the case may be referred to here collectively as the Certificate of Merger that –
 - (a) includes a copy of the resolution or other action by which the board agreed to the merger or consolidation plan; and
 - (b) states –
 - (i) the time and place of the board meeting at which the board agreed to the merger or consolidation plan;
 - (ii) the board's vote for and against adoption of the plan;
 - (iii) the time and place of the meeting at which the members approved the plan, if applicable;
 - (iv) the membership's vote for and against approval of the plan, if applicable; and
 - (v) the name of the surviving credit union.
- (2) The merging or consolidating credit union shall submit the Certificate of Merger and a copy of the plan of merger or consolidation to the Reserve Bank. The plan of merger or consolidation shall include a list of all of the persons who will serve as directors and as officers of the resulting institution; financial statements consisting of –
 - (a) balance sheets and income statements for each of the participating credit unions;

- (b) pro forma combined balance sheets and income statement for the resulting institution;
- (c) the addresses of all offices that will be operated by the resulting credit union; and
- (d) any other information that the Reserve Bank may request.

107 Decision by Reserve Bank

- (1) Subject to subsection (2), on approving the merger or consolidation, the Reserve Bank shall return a duplicate copy of the Certificate of Merger and plan of merger or consolidation to the resulting credit union.
- (2) The Reserve Bank may conditionally approve a merger or consolidation. If the approval is conditional, the Reserve Bank –
 - (a) shall state the condition in the order approving the merger or consolidation transaction; and
 - (b) may withhold filing the approved official copy of the Certificate of Merger until the condition has been met.
- (3) The merger or consolidation shall become effective at the time stated in the Certificate of Merger after the original copy of that Certificate has been filed with the Reserve Bank.

108 Considerations in determination

- (1) In determining whether to approve or disapprove the merger or consolidation transaction, the Reserve Bank shall consider the availability and adequacy of financial services in the local community; the effect that the merger or consolidation would have on the local community; and the financial strength and managerial resources of the resulting credit union.
- (2) The Reserve Bank shall not approve a merger or consolidation transaction unless the resulting institution will comply with all prudential requirements applicable to the operation of a credit union under this Act.
- (3) A credit union resulting from the merger or consolidation of two or more credit unions may have a defined community of interest consisting of the combined defined communities of interest of the participating institutions.

109 Property, obligations, and liabilities of resulting credit union

- (1) After a merger or consolidation is effected the property of the merged or consolidated credit union vests in the resulting credit union without an instrument of transfer or endorsement; and the obligations and liabilities of the merged or consolidated credit union are assumed by the surviving credit union.

- (2) After a purchase and assumption transaction has been completed, the assets and liabilities of the selling credit union shall vest in the purchasing credit union as provided in the purchase and assumption agreement.

110 Directives to address certain procedures.

The directives issued under this Part shall specify the procedures that a credit union shall follow to obtain Reserve Bank approval of a merger or consolidation.

PART VIII - CONTROLLERSHIP

DIVISION 1 - CONTROLLERSHIP ORDER

111 Controllership order, appointment of controller

- (1) The Reserve Bank may immediately issue a controllership order and appoint a controller to manage a credit union's affairs if –
- (a) the Reserve Bank, in performing the duties under this Act, finds that –
- (i) the credit union is insolvent or in imminent danger of insolvency;
 - (ii) the credit union or an employee, officer, or director of a credit union has –
 - (A) violated this Act, regulations, directives, notices or prudential standards issued under this Act, or another law that applies to credit unions;
 - (B) violated or neglected to follow a final order of the Reserve Bank;
 - (C) refused to submit to examination;
 - (D) refused to permit the Reserve Bank or the Reserve Bank's representative to examine the credit union's records and affairs, including books, papers, and accounts;
 - (E) conducted the credit union's business in an unsafe, unauthorised, or unlawful manner; or
 - (F) failed or refused to authorise and direct another person to permit the Reserve Bank or the Reserve Bank's representative to examine the credit union's records in the other person's custody or control, including books, papers, and accounts, following the Reserve Bank's request for the granting of that authority and direction; or
 - (iii) the credit union is not considered economically viable in the long term, on the basis of the Reserve Bank's assessment of the conditions listed in section 10; and

- (b) the Reserve Bank determines that the finding under subsection (1)(a)(ii) is sufficiently severe to require immediate affirmative action to prevent further dissipation of the credit union's assets.
- (2) The order shall clearly state the grounds for controllership.

112 Service of order

- (1) A controllership order shall be served personally on a director or an officer of the credit union by the Reserve Bank or a staff of the Reserve Bank authorised by the Reserve Bank.
- (2) Service may be made by mail if a director or an officer is not available for service on the date of issuance.

113 Reply to order

Not later than 30 days after the date on which a controllership order is served, the board shall file a written reply to the order. No other person shall have standing to challenge the controllership order.

114 Administrative and judicial review of a controllership order

The board may obtain administrative and judicial review of the controllership order as provided in sections 160 and 161.

115 Failure to file reply or request hearing

If the board does not file a reply to the controllership order as required by section 113 or fails to request and appear at the hearing provided for by section 114, then the credit union shall be deemed to have consented to the controllership order, and the Reserve Bank may proceed with the controllership in accordance with this Act.

DIVISION 2 - ADMINISTRATION OF CONTROLLERSHIP

116 Effect of controllership order and controller subject to Reserve Bank's control

- (1) A controller shall, under the direction of the Reserve Bank, have the authority to –
 - (a) take possession and control of the books, records, property, assets, and business of the credit union;
 - (b) conduct the business and affairs of the credit union;

- (c) perform any other action related to achieving the objectives of the controllership.
- (2) Following service of the controllership order, the credit union shall conduct only those operations that are authorised by the controller and those operations shall be conducted under his supervision.

117 Power to protect, preserve, and recover property

The controller shall be vested with all of the authority and powers of the members, directors, officers and committees of the credit union and shall be authorised to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorised by the Reserve Bank. The powers of the controller shall include, but not be limited to, the following powers –

- (a) the controller may take measures necessary to preserve, protect, and recover the assets or property of the credit union, including filing a lawsuit against any person;
- (b) an asset or property of the credit union includes a claim or cause of action that belongs to or that may be asserted by the credit union;
- (c) The controller may file, prosecute, defend or compromise a suit brought by or against the credit union if the controller believes that such action will promote the interests of the controllership; or
- (d) At the request of the controller, any litigation pending against the credit union shall be stayed until the completion of the controllership.

118 Duties of controller

- (1) The controller shall –
 - (a) take actions as directed by the Reserve Bank to remove the causes and conditions that made the controllership necessary;
 - (b) report to the Reserve Bank from time to time during the controllership as required by the Reserve Bank; and
 - (c) within 14 days after the issuance of the controllership order, the controller shall report to the Reserve Bank, and present a recommendation –
 - (i) whether rehabilitation of the credit union is feasible; or
 - (ii) whether the credit union should be liquidated.
- (2) If the controller believes that rehabilitation is feasible, then the controller shall provide a plan of rehabilitation with his recommendation; the plan of rehabilitation may include a proposal for reduction in liabilities of the credit union, as provided for in section 119.
- (3) At the request of the controller, the time for submission of the plan of rehabilitation may be extended for 30 days.

- (4) If the Reserve Bank approves the plan of rehabilitation, then the rehabilitation plan shall be implemented.
- (5) If the Reserve Bank determines that rehabilitation is not feasible and that the credit union should be liquidated, then the Reserve Bank shall issue a liquidation order and appoint a liquidator.

119 Reduction in liabilities

- (1) If the controller determines that losses of the credit union resulting from depreciation in the value of its assets or otherwise exceed the value of its undivided earnings and reserve fund so that the estimated value of its assets is less than the total of liabilities owing to its members, then the controller may propose that the loss be divided equitably among members through a reduction in liabilities owing to each member.
- (2) If the controller makes such a proposal, and if the proposal is approved by a majority of the members at a meeting called to consider that matter, then the controller shall include the proposal for a reduction in liabilities in the plan of rehabilitation to be submitted for consideration by the Reserve Bank.

120 Term of controller

The controller shall serve until –

- (a) the credit union has been rehabilitated; or
- (b) the Reserve Bank has issued a liquidation order regarding the credit union.

121 Transfer of management of rehabilitated credit union

If the credit union is rehabilitated, the controller shall return the management of the credit union to the board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for controllership.

122 Cost of controllership.

- (1) The Reserve Bank shall determine and approve any reasonable expenses attributable to the service of a controller.
- (2) All approved expenses shall be paid by the credit union. The Reserve Bank shall have a lien against the assets and money of the credit union to secure payment of approved expenses.

123 Exhaustion of administrative remedies

Administrative remedies shall be exhausted before a court may –

- (a) assert jurisdiction over a claim against the controller or the credit union; or
- (b) restrain or otherwise affect the exercise of the powers or functions of the controller.

PART IX – LIQUIDATION

DIVISION 1 - LIQUIDATION ORDER, CHALLENGES

124 Liquidation order and appointment of liquidator

- (1) The Reserve Bank, by liquidation order, may appoint a liquidator and direct that the credit union be liquidated if –
 - (a) the board requests issuance of a liquidation order and liquidation of the credit union pursuant to a resolution of a special meeting of members to that effect;
 - (b) the Reserve Bank finds that the credit union is not viable, cannot be rehabilitated and no suitable merger partner is available; or
 - (c) the Reserve Bank has determined to revoke the licence of the credit union pursuant to section 100(1)(h).
- (2) The special meeting under subsection (1) (a) shall be held in the same manner as provided in section 148.

125 Service of order

The Reserve Bank shall serve a liquidation order in the same manner provided for service of a controllership order.

126 Administrative and judicial review of liquidation order

The Board may obtain administrative and judicial review of a liquidation order as provided in sections 160 and 161.

127 Liquidator

The Reserve Bank shall appoint a liquidator. The liquidator shall carry out those acts and duties, including the execution of documents, that the liquidator believes necessary or desirable to maximise the value of assets available for distribution to members and other creditors, as permitted or required by this Act. The liquidator is subject to oversight and control by the Reserve Bank.

DIVISION 2 - ADMINISTRATION OF LIQUIDATION

128 Permissible activities in liquidation

A credit union in liquidation continues in existence only for the purposes of discharging debts, collecting and distributing assets, and winding up the credit union's business. Additionally, the credit union may sue and be sued to enforce debts and obligations until its affairs are fully adjusted.

129 Compensation of credit union employees and officers

This part does not prevent compensation, during the credit union's liquidation, of those salaried employees or officers of a credit union whose services the liquidator determines to be needed to carry out the liquidation efficiently and economically. The compensation is considered an expense of the liquidation.

130 Possession, consolidation, and disposition of assets

The liquidator shall receive and take possession of the books, records, assets, and property of the credit union; and sell, enforce collection of, and liquidate assets and property.

131 Repudiation of burdensome transactions

The liquidator may repudiate a contract or unexpired lease that the liquidator considers burdensome to the credit union.

132 Agreements made and assets transferred before liquidation

- (1) An agreement that tends to diminish or defeat the interest of the liquidator in an asset acquired under this part, either as security for a loan or by purchase, is not valid against the liquidator unless the agreement is –
 - (a) in writing;
 - (b) executed by the credit union and each person claiming an adverse interest under the agreement, including the obligor, contemporaneously with the acquisition of the asset by the credit union;
 - (c) approved by the board with the approval recorded in the minutes of the board; and
 - (d) an official record of the credit union continuously from the time of its execution.
- (2) The liquidator may bring proceedings in a court of law on behalf of the credit union to reclaim, for the benefit of the liquidation estate, assets that were transferred by the credit union to others –

- (a) within the period commencing six months before the credit union went into liquidation and ending on that date;
- (b) for which the credit union did not receive fair consideration; and
- (c) which were made by the credit union and its transferee with knowledge that the transfer would likely have the effect of preferring the interests of the transferee and prejudicing the interests of other creditors.

133 Court action, jurisdiction and venue

- (1) The liquidator may sue in the name of the credit union; and defend actions brought against the liquidator or the credit union.
- (2) A suit against a credit union or its liquidator while a liquidation order is in effect shall be brought in the civil court.
- (3) The liquidator may file suit to preserve, protect, or recover the credit union's assets or property.
- (4) An asset or property of the credit union includes a claim or cause of action that belongs to or that may be asserted by the credit union.

DIVISION 3 - CLAIMS RELATING TO CREDIT UNION IN LIQUIDATION

134 Claims against credit union

The liquidator shall –

- (a) determine the existence and amount of claims;
- (b) allow claims that are proven and determine issues regarding the validity of security interests;
- (c) settle or release a claim in favour of or against the credit union;
- (d) disallow claims that are unproven, or security interests that are not substantiated; and
- (e) make distributions to and pay creditors and members of the credit union as their interests appear.

135 Notice to creditors and members

- (1) The liquidator shall give notice to creditors and members to present and prove their claims.
- (2) In addition, a general notice shall be published once a week for three successive weeks in a local newspaper in circulation on the date the credit union ceased operations.

136 Priority of claims.

The liquidator shall use the credit union's assets to pay, in the following order -

- (a) secured creditors to the extent of the value of their collateral;
- (b) liquidation expenses, including a surety bond if such was required;
- (c) depositors;
- (d) general creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and
- (e) distributions to members in proportion to the shares held by each member.

137 Liquidation dividends

- (1) The liquidator from time to time shall, if satisfied that the resources of the liquidation permit this action to be safely taken, make a rateable liquidation dividend on claims that have been proved to the satisfaction of the liquidator; or adjusted by a court.
- (2) After the credit union's assets have been liquidated, the liquidator shall make further liquidation dividends on claims previously proved or adjusted.
- (3) For purposes of making a further liquidation dividend under subsection (2), the liquidator may accept the statement of an amount due to a claimant as shown on the credit union's books and records instead of a formal proof of claim filed on the claimant's behalf.

138 Barred claims

- (1) A claim not filed with the liquidation agent within three months after the date on which notice to present claims was first provided, shall be barred.
- (2) A claim rejected by the liquidator shall be barred unless an appeal of the liquidator's rejection is filed in accordance with the procedures of section 160 within 2 weeks after the date of notice of rejection.

DIVISION 4 - LIQUIDATOR**139 Removal of liquidator**

- (1) On finding that the liquidator has failed to properly perform the liquidator's duties in a timely and efficient manner or has violated this Act or a prudential standard, notice or directive issued under this Act, the Reserve Bank by removal order may take possession and control of the books, records, property, assets, and business of the credit union.
- (2) The removal order shall –

- (a) remove the liquidator and appoint a successor liquidator to complete the liquidation and the winding up of the credit union's affairs subject to the Reserve Bank's supervision and control; and
 - (b) be served on the liquidator being removed.
- (3) The removal order takes effect immediately on service.

140 Replacement of liquidator

The Reserve Bank shall appoint another liquidator on a liquidator's resignation, death, illness, removal, desertion, or incapacity to function.

141 Conflict of interest

- (1) The liquidator may not acquire an asset of the credit union in liquidation or purchase a loan of the credit union without the Reserve Bank's prior written approval.
- (2) A liquidator may not obtain from the liquidation compensation or profit for-
 - (a) direct or indirect personal benefit;
 - (b) the benefit of a family member of or a person associated with the liquidator; or
 - (c) the benefit of a business enterprise with which the liquidator is associated, other than the credit union.

142 Compensation

A liquidator is entitled to receive reasonable compensation during the liquidation as determined by the Reserve Bank.

DIVISION 5 - COMPLETION OF LIQUIDATION

143 Report of liquidation and distribution

The liquidator shall submit a report to the Reserve Bank within 3 months of the completion of the liquidation attesting that distribution has been made and liquidation is complete.

144 Cancellation of licence

The Reserve Bank, on receipt and approval of the report executed under section 143, shall revoke and cancel the credit union's licence.

PART X - VOLUNTARY LIQUIDATION

145 Approval of the Reserve Bank

No credit union may enter into voluntary liquidation, except with the prior written approval of the Reserve Bank.

146 Board resolution

Unless the Reserve Bank has issued a liquidation order, the board may adopt a resolution recommending voluntary dissolution of the credit union and directing submission of the question of liquidation to the members of the credit union.

147 Notification to Reserve Bank of proposed liquidation

Not later than 5 days after the date on which the board's resolution recommending voluntary dissolution is adopted, the board's presiding officer shall notify the Reserve Bank in writing of the reasons for the proposed liquidation.

148 Special meeting of members to liquidate

- (1) Notice of the special meeting to consider voluntary liquidation shall be served to each member of the credit union and the Reserve Bank within 10 days of the date of the meeting.
- (2) A special meeting of members shall be called to consider the proposed liquidation. The transaction may not proceed unless a majority of all members whether present or not, vote to dissolve and liquidate the credit union.

149 Credit union operations before and after vote

- (1) Immediately after notice under section 150(1), the Reserve Bank may restrict control or give direction with respect to the continued business of the credit union pending consideration of voluntary liquidation by the members.
- (2) The Reserve Bank may, in its discretion, direct that, during that period, no member shall withdraw an aggregate amount in excess of an amount to be determined by the Reserve Bank.
- (3) No new extensions of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of deposits and the funding of outstanding loan commitments approved before adoption of the resolution.

- (4) If the vote to dissolve and liquidate the credit union is affirmative, the credit union may conduct only business incidental to liquidation.

150 Notice to Reserve Bank of affirmative vote to liquidate

- (1) The board's president and secretary shall notify the Reserve Bank of the affirmative vote of members to liquidate and request approval for its liquidation within 5 days of the special meeting of the members. The notice should include a list of the names and addresses of the credit union's officers and directors with the notice.
- (2) The Reserve Bank may approve a request under subsection (1) if the credit union is solvent and has sufficient liquid assets or assets to be converted into liquid funds to repay its depositors and other creditors without delay.

151 Appointment of liquidator

The board shall appoint a liquidator subject to the approval of the Reserve Bank within 10 days of approval of the liquidation. The liquidator shall –

- (a) conserve and collect the credit union's assets;
- (b) wind up the credit union's affairs;
- (c) discharge the credit union's debts;
- (d) distribute the credit union's assets; and
- (e) take any other action necessary and incidental to liquidating the credit union.

152 Supervision of the voluntary liquidation by the Reserve Bank

- (1) The process of voluntary liquidation shall be subject to supervision by the Reserve Bank, who may request such reports and conduct such inspections as it believes necessary.
- (2) A credit union in the process of voluntary dissolution and liquidation remains subject to this Act, including its enforcement provisions. The plan of liquidation shall be approved by the Reserve Bank.
- (3) If the Reserve Bank determines, including in the course of such liquidation, that the credit union does not ensure an orderly liquidation or it fails to comply with this Act or with any regulations issued by the Reserve Bank, the credit union shall be liquidated pursuant to Part IX of this Act.

PART XI - CREDIT UNION LEAGUE

153 Establishment and constitution of the credit union league

- (1) A credit union league may be established and licenced under this Act, whose membership shall include all the credit unions licenced under this Act.
- (2) The credit union league shall, for the purpose of this Act be a credit union. It shall co-ordinate, assist and promote all credit unions and shall perform such functions as may be determined by its constituent members.
- (3) The credit union league may –
 - (a) pay market rates of return on money under its administration;
 - (b) invest in cash, government securities, government guaranteed investments or other investments as approved by the Reserve Bank; and
 - (c) establish an investment committee.
- (4) An investment committee established pursuant to subsection 3(c) shall comprise individuals who have a sound understanding of investment risks and liquidity management and shall be appointed for a maximum of two terms of three years each.
- (5) The committee shall establish the credit union league's investment policies and coordinate and oversee its investment portfolio.

PART XII - OFFENCES

154 Defamation

- (1) A person commits an offence if the person knowingly makes, circulates, or transmits to another person a false statement that is derogatory to the financial condition of a credit union with the intent to injure that credit union; or counsels, aids, procures, or induces another person to make, circulate, or transmit a false statement that is derogatory to the financial condition of a credit union with the intent to injure that credit union.
- (2) An offence under this section is punishable upon conviction to imprisonment of a term not exceeding 3 years or a fine not exceeding \$10,000 or both.

155 Disclosure of confidential information

A director, officer, or employee of a credit union commits an offence if the person knowingly discloses confidential information in possession of the credit union without authorisation and is liable to imprisonment for a term not exceeding 10 years or a fine not exceeding \$100,000 or both.

156 Consideration for loan, investment, or purchase

- (1) If a director, committee member, officer, or employee of a credit union demands or knowingly receives, directly or indirectly, consideration for the credit union's making a specific loan or investment or purchasing an asset, that person commits an offence.
- (2) An offence under this section is punishable upon conviction to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$1,000,000 or both.

157 Loan to non-member

- (1) If a director, committee member, officer, or employee of a credit union knowingly permits a loan to be made to a non-member, that person commits an offence.
- (2) A person who commits an offence described by subsection (1) is liable to the credit union for the amount loaned. The illegality of the loan is not a defence in an action by the credit union to recover on the loan.
- (3) Extending credit to a non-member as a co-maker with a member does not constitute making a loan to a non-member.

158 False statements or documents and destruction of records

- (1) A person commits an offence if the person knowingly and with the intent to deceive –
 - (a) makes a false entry on a record, report, or statement of a credit union; or
 - (b) in connection with an examination or investigation of a credit union by the Reserve Bank, exhibits a false paper, instrument, or security or gives under oath a false answer to a question directly related to the examination or investigation asked the person by the Reserve Bank's representative.
- (2) A person commits an offence if the person knowingly removes, destroys, or conceals a record of the credit union for the purpose of concealing a fact or information from the Reserve Bank's representative.
- (3) An offence under this section is punishable upon conviction to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$1,000,000 or both.

159 Administrative penalty and injunction

- (1) If a credit union or other person does not comply with an order, directive or prudential standard issued by the Reserve Bank, the Reserve Bank, after giving notice, may assess an administrative penalty against the credit union, the designated person, or both, in an amount of not less than \$100 or more than \$10,000 each for each day of the violation of the order.

- (2) The credit union may not reimburse or indemnify a person for any part of the administrative penalty.
- (3) A credit union or other person against whom administrative penalties have been assessed may obtain administrative and judicial review thereof as provided in section 160.

PART XIII - ADMINISTRATIVE AND JUDICIAL REVIEW

160 Administrative review and judicial review

- (1) Any party aggrieved with a legitimate interest by a final order or decision of the Reserve Bank or a decision of a liquidator on a claim may, within 14 days of the issuance of such order or decision, obtain an administrative review thereof by filing a request for review with the Supreme Court of Tonga.
- (2) The Supreme Court of Tonga shall review the order or decision of the Reserve Bank or liquidator and issue its own decision affirming, modifying, remanding or setting aside the order or decision.
- (3) The Supreme Court of Tonga shall issue its decision within 2 months of the date on which the request for review was filed and shall not be contested.
- (4) The filing of a request for administrative or judicial review shall not automatically affect a suspension of any decision taken or measure imposed by the Reserve Bank.

161 Administrative and judicial review of controllership and liquidation orders

- (1) The board of a credit union may obtain administrative and judicial review of controllership and liquidation orders as stated in section 160, except that the time periods provided for filing and acting upon such matters shall be as provided in this section.
- (2) If the board of a credit union files a request for administrative review of a controllership or a liquidation order, the Supreme Court of Tonga shall promptly set a date for a hearing on such review.
- (3) The Supreme Court of Tonga shall promptly give the credit union notice of the date, time and place of the hearing.
- (4) Within 14 days of a hearing, the Supreme Court of Tonga shall issue its order affirming, modifying or declaring unjustified the issuance of the controllership or liquidation order.
- (5) A decision of the Supreme Court of Tonga shall be final.

PART XIV – MISCELLANEOUS

162 Business days, public holidays, business and transactions

- (1) In this section, the term-

“business day” means that part of any day on which a credit union is open to the public for carrying on substantially all of its functions or transactions;

“public holiday” means any day which by law is designated or recognised as a public holiday; and

“transaction” means any one or more of the functions and elements of the business of a credit union and includes, but is not limited to, the receipt or giving of any notice; the receipt or acceptance of deposits; the transmission, acceptance, payment, dishonour, and giving notice of dishonour of items; and its obligations and duties with respect to all thereof; and the word "transact" means to take action or non-action the result of which is a transaction.

- (2) A credit union is deemed to be closed on any day, or any part of a day, when it is not open to the public for carrying on substantially all of its functions or transactions.
- (3) A credit union shall be closed on Sundays and on all public holidays. When a credit union is closed in accordance with subsection (2), it is not under any obligation or duty to conduct any of its business or effect any transaction.
- (4) Any notice, item, or deposit of money received on any legal holiday may be treated as being received at the opening of the next business day, and any transaction or other business which would or should have occurred or been transacted on any such public holiday may be treated as postponed by law to the next business day.
- (5) A credit union may establish the regular hours of each business day during which each of its branches or offices will be open.

163 Closing during emergencies and other special days

- (1) In this section, the term –

“emergency” means any condition or occurrence, actual or threatened, which may interfere substantially with the conduct of normal business operations of a credit union or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may exist, arise, or be imminent as the result of any one or more, actual or threatened, of the following- fires; floods; earthquakes; hurricanes; wind, rain, or other storms; labour disputes and strikes; power failures; transportation failures; interruption of communication facilities; shortages of fuel, food, transportation, or labour; robberies or burglaries or attempted robberies or burglaries; actual or threatened enemy attacks;

epidemics or other catastrophes; explosions; and riots, civil commotions, and other acts of lawlessness or violence, actual or threatened; and

“**Office**” means any place at which a credit union is authorised to transact its business or conducts operations relating to its business.

The authorisations herein provided for an institution to close in case of an emergency means and includes the authority not to open on any business day and, if having opened, to close and suspend business.

- (2) Whenever the Reserve Bank is of the opinion that an emergency exists or is impending, he may, by proclamation, authorise credit unions located in the affected area or areas to close. The credit unions affected by any such proclamation may close and may remain closed until the Reserve Bank proclaims that the emergency has ended, or until such earlier time as the officers of the institution determine that the credit union should reopen.
- (3) Whenever the officers of a credit union are of the opinion that an emergency exists, or is impending, which affects, or may affect, the credit union, they shall have the authority, in the reasonable exercise of their discretion, to close the credit union on any business day or days during the continuation of such emergency, even if the Reserve Bank has not issued and does not issue a proclamation of emergency. The office so closed may remain closed until such time as the officers determine that the emergency has ended and for such further time thereafter as may reasonably be required to reopen. However, in no case may such credit union remain closed pursuant to this subsection for more than 48 consecutive hours, excluding other public holidays, without requesting the approval of the Reserve Bank.
- (4) A credit union that closes under subsection (3) shall give notice of its action to the Reserve Bank as promptly as conditions reasonably permit and by any means reasonably available.
- (5) The officers of a credit union may close the credit union on any day or days designated by proclamation of the Parliament as a day or days of mourning, rejoicing, or other special observance.

164 Significant events, notice required

- (1) Every credit union shall notify the Reserve Bank of the occurrence of any of the events listed in subsection (2) by filing a disclosure in a form to be specified by the Reserve Bank. The form shall include the number and caption of all applicable events, along with a summary of each. Completed forms shall be certified for authenticity and accuracy by the General Manager of the credit union.
- (2) Events for which disclosure forms shall be filed within 10 days of the occurrence of the event –
 - (a) the addition, resignation, or termination of a director, committee member, officer, external auditor, or external counsel;

- (b) the acquisition or divestiture of an asset or assets the value of which exceeds 20 percent of capital as of the date of the most recent quarter end;
 - (c) any change in general counsel;
 - (d) any interruption of fidelity insurance coverage;
 - (e) any credit extension that causes the aggregate amount of loans under section 70(1)(d) to exceed 20 percent of the capital of the credit union; and
 - (f) any suspected criminal act perpetrated against a credit union or service corporation. However, no liability shall be incurred by any credit union or service corporation as a result of making a good faith effort to fulfil this disclosure requirement.
- (3) A credit union that fails to file a disclosure form within 10 days after the occurrence shall be subject to a fine not exceeding \$10,000.

165 Retention and destruction of certain records

- (1) The following credit union records shall be retained permanently in either their original form or as a copy or reproduction that complies with subsection (4) -
- (a) licence, bylaws, and amendments;
 - (b) general ledger and supporting subsidiary ledgers;
 - (c) minutes of meetings of the members, the board, the Credit Committee and the Supervisory Committee;
 - (d) audit reports and opinions, under section 40 or 41, and any attachments, supporting work papers, and communications between the auditor and the credit union relating to the audit; and
 - (e) listings of records destroyed.
- (2) The following credit union records, if used, shall be retained in either their original form or as a copy or reproduction that complies with subsection (4), for a period of at least 7 years –
- (a) balance sheets and statements of income and expenses;
 - (b) individual share and loan records;
 - (c) journal and cash records;
 - (d) cash account reconcilements;
 - (e) dividend records;
 - (f) expense records;
 - (g) reports of financial condition;
 - (h) matured investment records;
 - (i) supervisory or audit committee summary of account verification or the equivalent prepared by a certified public accountant; and

- (j) closed applications for membership and share account agreements.
- (3) No liability shall accrue against any credit union destroying any such records after the expiration of the period provided in subsection (2), and in any cause or proceedings in which any such records or files are called into question or demanded of the credit union or an employee thereof, a showing that such records or files have been destroyed in accordance with the terms of this section constitutes a sufficient excuse for the failure to produce them.
- (4) A credit union may make a copy or reproduction of any of its records by the following methods –
 - (a) photograph;
 - (b) microphotograph;
 - (c) archival computer media; or
 - (d) reproduction on film.
- (5) If the copy or reproduction is made in such manner that each page is exposed in its entirety and is duly certified or authenticated by a responsible officer of the credit union under whose supervision the records are kept, then the copy or reproduction or any duly certified or authenticated copy or reproduction thereof, shall be admitted and received as evidence with the same force and effect as the original record.

166 Transitional

Any credit union registered in accordance with the Credit Union Act (Cap. 16.05) shall be treated as licenced in accordance with this Act for a period of 3 months. If at the end of that period, the credit union is not in full compliance with this Act, then the Reserve Bank may take any corrective or other action authorised under this Act with respect to the noncompliance of the credit union.

167 Repeal

The Credit Union Act (Cap. 16.05) is hereby repealed.

Passed by the Legislative Assembly this **24th** day of **August** 2021.