

**TURKS AND CAICOS ISLANDS**  
**CREDIT UNION ORDINANCE 2016**  
**(Ordinance 27 of 2016)**

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**TURKS AND CAICOS ISLANDS  
CREDIT UNION ORDINANCE 2016**

**(Ordinance 27 of 2016)**

*Assent*.....15<sup>th</sup> August 2016

*Publication in Gazette*.....19<sup>th</sup> August 2016

*Commencement*.....in accordance to section 1

**AN ORDINANCE** TO PROVIDE FOR THE CREATION OF CREDIT UNIONS IN THE TURKS AND CAICOS ISLANDS AND FOR REGULATION OF THE FINANCIAL BUSINESS ACTIVITIES OF ALL CREDIT UNIONS AND FOR THE ASSIGNMENT OF SUPERVISORY AND LICENSING RESPONSIBILITY TO THE TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION.

**ENACTED** by the Legislature of the Turks and Caicos Islands.

PART I  
PRELIMINARY

**Short title and commencement**

1. This Ordinance may be cited as the Credit Union Ordinance, 2016 and shall come into force on such day as the Governor may appoint by Notice published in the *Gazette*.

**Interpretation**

2. In this Ordinance—

“affiliate” means an entity where the board and more than 50% of the membership of that entity are the same as that of the credit union;

“authorised person” means an individual or entity authorised in writing by the Commission;

”board of the credit union” means the board of management to whom the management of the affairs of a credit union is entrusted;



“business of a credit union” means the classes of business activities described in Schedule 1;

“business day” means any day on which credit unions licensed under this Ordinance are open for the conduct of business in the Islands;

“by-laws” means the by-laws of a credit union approved by the Commission under section 13(1)(f);

“capital” means the total of undivided surplus or retained earnings, permanent shares and reserve funds set up by a credit union;

“compliance directions” means directions issued by the Commission under section 79;

“class of business activities” means the business activities listed as business activities in Schedule 1;

“Commission” means the Turks and Caicos Islands Financial Services Commission established under the Financial Services Commission Ordinance;

“control” means the power of a person acting either alone or with a relative, related party or other person by an agreement, or otherwise, to—

(a) ensure that the business and affairs of a credit union or company is conducted in accordance with his wishes; or

(b) exercise dominant influence over the conduct of the business and affairs of a credit union or company;

and the term “controlling shareholder” shall be construed accordingly;

“credit committee” means the committee constituted under section 140;

“credit exposure” means—

(a) the amount of risk arising from the extension of credit by a credit union or arising from investments including without limitation equities, bonds and other debt instruments, guarantees, participations and acceptances made by a credit union;

(b) other claims on a counterparty including actual and potential claims;

(c) contingent liabilities arising in the normal course of business, and which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the credit union has committed itself to provide; or

(d) deposits placed with entities in which the credit union is a significant or controlling shareholder;

“credit union” means a financial co-operative society which—

- (a) has as its main objects the promotion of thrift and the creation of a source of credit for its members for provident and productive purposes; and
- (b) is licensed under section 14;

“delegate” means a person appointed by a member to be his representative at a meeting;

“deposit” means a sum of money paid to a credit union, by a member, whether or not evidenced by any entry in a record of the credit union receiving the sum of money but evidenced by an official receipt or statement from the credit union, on terms under which the sum of money will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by, or on behalf of the member and that credit union;

“dividend” means a share of the surplus of a credit union divided among its members in proportion to the share capital held by each member;

“financial service” includes the business of banking, business of a financial nature, the business of a credit union, insurance business, the business of securities, and the management and administration of pension fund plans;

“fit and proper criteria” means the criteria listed in Schedule 2;

“institutional capital”, in relation to a credit union, means the statutory reserves, retained earnings and where applicable, permanent shares and any other capital account approved by the Commission;

“key operational staff” means any person appointed by the board of the credit union with responsibility for—

- (a) the general management of a credit union;
- (b) the financial records of a credit union; or
- (c) the investment business activities of a credit union;

“large exposure” means the aggregate of all credit exposures to any single person, member or related party which amounts to 20% or more of the total institutional capital of a credit union;

“licence” means the certificate issued to a credit union in accordance with sections 12 and 14;

“liquid assets” means the total amount of funds that are—

- (a) in the form of cash; or
- (b) any other instrument or investment that can be converted into cash within three months with little or no loss in value;

“member” means a person joining in the application for the licensing of a credit union and a person admitted to membership after licensing in accordance with this Ordinance and the by-laws of that credit union and holding at least one share in the credit union;

“Minister” means the Minister to whom responsibility for finance is assigned;

“non-financial activity” means any activity which does not consist, either wholly or substantially of the business activities as listed in Schedule 1;

“officer” includes—

- (a) the chairman;
- (b) the managing director;
- (c) the secretary;
- (d) the treasurer;
- (e) any other member of the board of a credit union;  
and
- (f) a member of any committee required to be established in accordance with this Ordinance;

“permanent share” means a share issued by a credit union to its members only, that may not be purchased by the credit union nor redeemed or withdrawn except upon the winding-up of the credit union;

“prudential criteria” means the criteria and standards established under this Ordinance for the purpose of setting limits and constraints on credit unions for the protection of members and potential members from undue loss and for ensuring the safety and soundness of the credit union sector, as set out in Schedule 6;

“qualified accountant” means a person—

- (a) who is a member of the Turks and Caicos Islands Society of Professional Accountants;
- (b) who holds a recognised professional qualification and is a member of a professional association as may be approved by the Commission;

“related party” means—

- (a) an officer of a credit union;
- (b) key operational staff of a credit union;
- (c) a relative of an officer or of key operational staff of a credit union;
- (d) a person with a significant interest in the shares of the credit union;

- (e) an entity controlled by a person referred to in paragraph (a), (b), (c) or (d);
- (f) an entity in which a person referred to in paragraph (a), (b), (c) or a person referred to in paragraph (d), has a substantial investment; and
- (g) any other person whose relationship to another person is such that in the opinion of the Commission, that relationship may cause a conflict of interest or may pose a regulatory risk;

“relative”, in relation to a person, means—

- (a) the spouse;
- (b) a parent;
- (c) a brother;
- (d) a sister; and
- (e) a child (including adopted child and step-child);

“reserve fund” means any monies set aside in a capital account by a credit union for a special purpose, in accordance with this Ordinance and the by-laws of the credit union;

“secondary body” means a society whose members consist exclusively of societies or a combination of societies and individuals;

“significant shareholder” means a person or credit union who either alone or with one or more related parties controls, whether by agreement or otherwise, 10% or more of the shares of the credit union, company or unincorporated body and “significant interest” shall be construed accordingly;

“statutory committee” means—

- (a) the credit committee established under section 140;
- (b) the supervisory committee established under section 133; or
- (c) any other committee which the Commission requires a credit union to establish in accordance with section 146;

“statutory reserve” means any fund set aside by a credit union solely for institutional capital purposes;

“substantial investment” means an interest or investment held by a credit union in any entity which is, or will be equal to, or greater than 20% of the equity interests in the entity or such other percentage as may be prescribed by regulations;

“supervisory committee” means the committee established under section 133;

“supervisory information” means a record created or obtained by the Commission in connection with the performance of its responsibilities under this Ordinance, such as a record concerning supervision, authorisation, or examination of a

credit union or enforcement actions with respect to a credit union, and includes any communication or correspondence between the credit union and the Commission arising from its performance of such responsibilities;

“unsafe or unsound practice” means any action or lack of action that is contrary to generally accepted standards of prudent operation and conduct including those standards outlined in Schedule 6; and

“withdrawable share” means any share issued by a credit union other than a permanent share.

### **Application**

**3.** (1) This Ordinance does not apply to financial institutions as defined in section 2 of the Banking Ordinance.

(2) Every credit union licensed under this Ordinance shall trade or carry on business under the name or title of which the word “credit union” is a part.

### **Inconsistency with other legislation**

**4.** In the event of any inconsistency between the provisions of this Ordinance and the operation of any other law, except any law on or relating to the regulation of financial institutions, exchange of information, money laundering, financing of terrorism and proceeds of crime, the provisions of this Ordinance shall prevail to the extent of the inconsistency.

### **Co-operative principles**

**5.** (1) For the purpose of this Ordinance, a credit union conforms to the co-operative principles if—

- (a) each member or delegate has no more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) the business is carried on primarily for the benefit of its members;
- (d) its membership is voluntary and available without any artificial restrictions or any unlawful basis of discrimination to any person who can use its services and is willing to accept the responsibilities of membership;
- (e) the limit on dividends on share capital and qualifying shares that it pays does not exceed the rate as set out in the by-laws;
- (f) any surplus or savings out of the credit union’s operations is used for one or more of the following purposes—

- (i) to develop its business;
- (ii) to provide or improve common services to members;
- (iii) to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation;
- (iv) to be contributed to non-profit charitable benevolent organisations;
- (v) to be contributed to equity until total equity equals 12% of total assets; and

(g) co-operation with other credit unions is pursued.

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

## PART II

### ADMINISTRATION

#### **Functions of the Commission**

**6.** The Commission shall be responsible for—

- (a) the general administration of this Ordinance;
- (b) determining the financial soundness of credit unions;
- (c) supervising credit unions to ensure their compliance with this Ordinance;
- (d) maintaining an appropriate level of protection for members' deposits and shares; and
- (e) ensuring compliance of credit unions with any written law for the prevention of money laundering and terrorist financing including the Proceeds of Crime Ordinance, and the Financial Intelligence Agency Ordinance.

#### **Powers of the Commission**

**7.** Subject to this Ordinance, in the discharge of its responsibilities pursuant to section 6, the Commission may—

- (a) issue, vary, restrict or revoke licences;
- (b) establish prudential criteria to be met by credit unions;
- (c) request information from credit unions;

- (d) perform assessments of the risk profile and the safety and soundness of a credit union;
- (e) conduct on-site examinations of credit unions;
- (f) conduct continuous off-site assessments of the financial condition and performance of credit unions and of their compliance with this Ordinance;
- (g) issue prudential standards to promote compliance with any of the provisions of this Ordinance;
- (h) take any other action considered necessary by the Commission to ensure the safety and soundness of the credit union sector in accordance with this Ordinance.

### **Commission to keep Governor informed**

8. The Commission shall keep the Governor informed of all developments and business activities which affect the credit union sector of the Islands.

### **Publication of information**

9. (1) The Commission may publish information relating to a credit union sector including statistics collected under section 93, so long as the publication does not disclose details regarding any particular credit union or credit union member.

(2) This section does not apply to information which at the time of the disclosure is, or has already been made available to the public from other sources or to information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

(3) Where the disclosure of information is authorised under this section, no action shall lie against the Commission or any person acting under the direction of the Commission.

### **Status of supervisory information**

10. Supervisory information is the property of the Commission and shall not be disclosed by a credit union or any other person to whom the information is made available without the prior written consent of the Commission.

## **PART III**

### **LICENSING**

### **Requirement for licence to operate**

11. A person shall not carry on the business of a credit union in the Islands without a licence granted by the Commission.

### **Application for licence**

**12.** An application for a licence to carry on any of the business activities listed in Schedule 1, shall be made in writing to the Commission, as the Commission may specify and shall include—

- (a) the non-refundable application fee specified in Schedule 7;
- (b) two copies of the application, which must state—
  - (i) the proposed name of the credit union;
  - (ii) the street address of the credit union's principal place of business;
  - (iii) a declaration that the credit union's term of existence is perpetual;
  - (iv) a declaration of the credit union's fiscal year;
  - (v) the aggregate value of all initial shares;
  - (vi) the name and address of, and the number of non-withdrawable qualifying shares subscribed by each organiser;
  - (vii) the number of directors constituting the initial board and the name and address of each person who will serve as a director until the first annual meeting; and
  - (viii) the defining bond of association shared by the members of the credit union at the time of licensing.
- (c) two certified copies of the instrument under which the credit union is organised and the by-laws of the credit union;
- (d) a business plan covering three years and providing detailed explanation of the actions intended to accomplish the primary functions of the credit union; and
- (e) such other information as the Commission may specify.

### **Conditions for licence**

**13.** (1) Subject to subsection (2) no credit union may be licensed under this Ordinance—

- (a) unless its membership consists of individuals who are eighteen years and older;
- (b) unless it is considered to be economically viable by the Commission, having assessed the demand for its proposed services, the potential size of the credit union, the capital base and the membership base;



- (c) unless there is conformity among its membership, with all the co-operative principles as set out in section 5, except where in exceptional circumstances the Commission may in its discretion waive this condition;
- (d) if the name of the credit union is identical with that of another credit union or which nearly resembles that name as to be likely to mislead the members of the public as to its identity;
- (e) unless it has and maintains an address to which all notices and communications may be sent;
- (f) unless its by-laws are in conformity with this Ordinance and are approved by the Commission;
- (g) unless, the name on the licence certificate of the credit union is prominently displayed in legible letters in a conspicuous position on the outside of every office or place in which the business of the credit union is carried on, from the date of commencement of the credit union's operations; and
- (h) unless its authorised persons, directors, officers or significant shareholders are declared fit and proper by the Commission in keeping with the criteria set out in Schedule 2.

(2) The membership of each credit union licensed under this Ordinance shall comprise a minimum of 100 members.

### **Approval or rejection of licence**

**14.** (1) The Commission may approve or reject an application made under section 12.

(2) The Commission shall upon its approval of an application, issue to the applicant a licence, upon the payment of the initial licence fee specified in Schedule 7.

### **Activities of a credit union**

**15.** A credit union which has been issued a licence under section 14(2) shall engage in the class of business activities as specified by the Commission.

### **Terms and conditions of licence and fees**

**16.** (1) A licence may contain such terms and conditions as the Commission considers appropriate taking into account the particular circumstances of the credit union.

(2) Every credit union licensed under this Ordinance shall pay an annual licence fee as specified in Schedule 7.

(3) All licence fees paid under this Ordinance are payable to the Commission not later than the thirty-first day of January in each year or such later date as may be specified by the Commission, except that the fee payable in any year where a licence is issued, or a branch is opened for the first time in the—

- (a) first quarter shall be 100% of the fee;
- (b) second quarter shall be 75% of the fee;
- (c) third quarter shall be 50% of the fee;
- (d) fourth quarter shall be 25% of the fee.

(4) Where a credit union fails to pay the annual licence fee under subsection(2), the credit union is liable to a penalty of \$15,000 and a further penalty of \$1,000 for each day of default.

### **Notice of licence**

17. Notice of the issuance of a licence by the Commission shall be published in the *Gazette*, and in at least two newspapers in national circulation and by electronic or any other means that the Commission considers appropriate.

### **Refusal of licence**

18. Where the Commission refuses to grant a licence, the Commission shall give reasons for the refusal to the applicant in writing, within fourteen days of the date of refusal.

### **Return of licence**

19. Where a credit union is closed or relocated, the credit union shall return the original licence to the Commission within thirty days of closing or relocating.

### **Display of licence**

20. A credit union shall display its licence at its registered office and at all its branches.

### **Offence of carrying on the business of a credit union without a licence, etc.**

21. (1) A person shall not—

- (a) carry on the business of a credit union without a licence; or
- (b) having obtained a licence, carry on any business other than the business of a credit union that it is approved to do pursuant to section 15.

(2) Notwithstanding subsection (1), where the Commission has reasonable grounds to believe that a person is carrying on any aspect of the business of a credit union without a licence, it may require information from, inquire into and examine the affairs of

the person to determine whether the person is conducting the business activities and may issue a compliance direction under section 79, to cease the activity.

(3) A person shall comply with any request made by the Commission pursuant to subsection (2).

(4) Notwithstanding subsection (1), the Commission may allow a credit union to conduct non-financial business activities subject to sections 22 and 23.

### **Transfer of business activities**

**22.** Where a credit union is conducting non-financial business activities that exceed the limits set out in this Ordinance, it shall transfer those business activities to—

- (a) an affiliate of the credit union; or
- (b) any other form of business enterprise that is set up by the membership of the credit union.

### **Investment of funds in an affiliate, etc.**

**23.** A credit union may invest in an affiliate, from its net surplus funds where the conditions for distribution of surplus set out in section 105 and all prudential criteria of this Ordinance are met prior to the investment of these funds.

### **Treatment of operating expenses of affiliates**

**24.** The operating expenses of any other business entity established by the credit union, shall not be reflected as expenses of the credit union but as expenses of the other entity.

### **Location and approval of branches, etc.**

**25.** (1) A credit union shall not, without at least thirty days prior notice in writing to the Commission, establish, acquire, relocate or open or close a branch and shall pay the fee specified in Schedule 7.

(2) A credit union wishing to conduct business of a credit union outside of the Islands shall first obtain the written approval of the Commission.

### **Restricted words, names, practices**

**26.** (1) Except with the written consent of the Commission, no person other than a credit union shall—

- (a) use the word “credit union”, or any other word indicating the carrying on of credit union business activities, in the name, description or title under which a person is carrying on business in the Islands;

- (b) make or continue to make representations in any billhead, letter, letterhead, circular, paper, notice, advertisement or in any other manner that the person is carrying on credit union business activities in the Islands; or
- (c) in any manner solicit or receive deposits from the public, or any employees of that person.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of three years or to both and in the case of a continuing offence to a further penalty of \$2,000 for each day the offence continues.

**Request to vary existing classes of business activities in a licence**

27. (1) A credit union which has been issued a licence by the Commission shall not be permitted to vary its existing business activities unless it is, in the opinion of the Commission, in compliance with the provisions of this Ordinance.

(2) On an application made under this section, the Commission may, approve or reject the application.

(3) Where the Commission approves an application made under subsection (2) it shall, upon its approval of an application for variation of the classes of business activities, issue to the applicant a new licence.

(4) The Commission may, as a condition of granting approval for variation of a credit union's classes of business activities, vary its institutional capital and other prudential criteria and establish additional criteria.

(5) Where a credit union has been granted a variation of its business activities on any condition imposed by the Commission, and the credit union fails to comply with that condition, the Commission may issue directions as it thinks necessary in accordance with section 29.

(6) A credit union shall comply with a direction issued by the Commission under this section.

(7) Where the Commission refuses to vary the business activities of a credit union, the Commission shall give reasons for the refusal to the applicant in writing within fourteen days of the date of its refusal.

**Restrictions on a licence**

28. (1) The Commission may impose or vary restrictions on the licence of a credit union where—

- (a) the credit union has failed to comply with any obligation imposed under this Ordinance;

- (b) the credit union has failed to comply with any requirement, prohibition, compliance direction or any other direction issued by the Commission;
- (c) the credit union has provided the Commission with false, misleading, inaccurate or incomplete information;
- (d) the credit union has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Ordinance, and the Financial Intelligence Agency Ordinance;
- (e) in the opinion of the Commission, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason;
- (f) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
- (g) any of the standards of prudent operation and conduct as outlined in Schedule 6, has not been fulfilled or is unlikely to be or may not be fulfilled in respect of the credit union;
- (h) a receiver or receiver-manager of the credit union has been appointed; and
- (i) in the opinion of the Commission, the credit union is unable to pay deposits or shares to its members without undue delay.

(2) The Commission may impose or vary restrictions on a licence by issuing such directions as it thinks necessary in accordance with section 29.

(3) Where the grounds for imposing a restriction or varying a restriction on a licence no longer apply, the Commission may withdraw the restriction or variation imposed by written notice to the credit union.

(4) Where the Commission places a restriction on a licence it shall not relieve a credit union of any obligation incurred or assumed by it prior to the imposition of the restriction.

(5) A credit union may appeal the decision of the Commission to restrict or vary a restriction on a licence in the Supreme Court.

(6) A credit union or an officer shall comply with a direction issued by the Commission under this section.

(7) Notwithstanding subsection (6) and section 208(1), where the Commission is satisfied that a credit union has failed to comply with a direction, the Commission may take any other

action it considers fit in accordance with section 75 to ensure the safety and soundness of the credit union.

(8) The provisions of section 84 shall apply to this section with such modifications as the circumstances require.

### **Procedure for imposing restrictions or variations of restrictions on a licence**

**29.** Where the Commission proposes to—

- (a) restrict a licence; or
- (b) vary the restrictions imposed on a licence,

it shall serve a written notice of intention to do so on the credit union, except that in any case in which the Commission considers that the restriction or variation of restriction should be imposed as a matter of urgency, the Commission may serve a written notice of restriction or variation without first serving a notice of intention.

### **Notice of intention**

**30.** A notice of intention issued by the Commission to restrict or to vary a restriction on a licence shall—

- (a) specify the proposed restriction or the proposed variation;
- (b) specify the grounds on which the Commission proposes to restrict or vary an existing restriction;
- (c) state the date on which such proposed restriction or variation is to take effect;
- (d) state that representation may be made in accordance with section 32; and
- (e) state that after taking into account the representation made under section 32 the Commission may make a determination under sections 31 or 34.

### **Service of notice of intention**

**31.** Where—

- (a) the ground for a proposed restriction or variation of a restriction of a licence is that the criteria with respect to a fit and proper person, as required under item 1 of Schedule 2, is not being fulfilled or has not been fulfilled or is unlikely to be or may not be fulfilled; or
- (b) a proposed restriction or variation of a restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Commission shall serve on the person referred to in paragraph (a) or (b), a copy of the notice of intention to impose a restriction

or vary a restriction, as the case may be, together with a statement of his rights under section 32, except that in any case in which the Commission considers that the restriction or variation of restriction should be imposed as a matter of urgency, the Commission may serve a written notice of restriction or variation without first serving a notice of intention.

### **Right to make representation**

**32.** Where a credit union or a person is served with a notice of—

- (a) intention;
- (b) variation; or
- (c) restriction,

under section 29 or 31, the credit union or the person, as the case may be, may within a period of fourteen days commencing from the day after which the notice was served, make representation to the Commission.

### **Effect of restriction**

**33.** A restriction imposed under section 29 continues to have effect after the expiration of fourteen days commencing from the day after which the notice was served, where—

- (a) the credit union or the person has made no representation to the Commission; or
- (b) the Commission has notified the credit union or the person in writing that, in his opinion, there are insufficient grounds to revoke the restriction.

### **Directions to restrict, vary, etc.**

**34.** The Commission shall take into account the representation made under section 32 and make a determination to—

- (a) restrict a licence;
- (b) vary any restriction on a licence;
- (c) take no further action; or
- (d) take any other regulatory action permitted under this Ordinance,

in such a manner as the Commission thinks fit and to issue directions accordingly in writing.

### **Conditions for directions to restrict, vary, etc.**

**35.** The directions issued under section 34 shall state—

- (a) the determination;
- (b) the grounds for the decision;

- (c) the date on which the restriction or variation is to take effect; and
- (d) the right of the individual or credit union, so served, to make an appeal to the Supreme Court under section 216.

### **Service of directions**

36. The directions under section 34 shall be served within a period of twenty-one days commencing on the day after the notice of intention referred to in section 29, was served.

### **Effect of directions**

37. The directions imposing a restriction or varying the restriction of a licence shall have the effect of restricting the licence or varying the restriction in the manner specified in the directions, as the case may be.

### **Publication of directions**

38. The Commission shall, no later than thirty days after its decision, publish notification of the restriction or variation of a restriction on the credit union's licence in the *Gazette* and in at least two newspapers in national circulation and by electronic or any other means that the Commission considers appropriate.

### **Grounds for revocation of a licence by the Commission**

39. (1) Where the Commission is satisfied that—
- (a) the operations of the credit union threaten the credit union sector in the Islands;
  - (b) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
  - (c) in the opinion of the Commission, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs;
  - (d) the credit union has not accepted a deposit or issued shares in the Islands for any continuous period of more than six months or has otherwise ceased to carry on class of business activities of a credit union for a continuous period of twelve months, after its first year of operation;
  - (e) a receiver or receiver-manager of the credit union has been appointed;
  - (f) the holder of any debenture secured by a charge has taken possession of most or a significant part of the



property of the credit union comprised in or subject to the charge;

- (g) the credit union has failed to comply with a direction issued under section 35;
- (h) the credit union has failed to pay its premium to the mandatory fund for the purpose of protecting the shares and deposits of members; or
- (i) the credit union has failed to comply with any obligation imposed under this Ordinance or any law relating to the regulation of a financial institution,

the Commission may, after considering all the relevant facts and circumstances, revoke the licence of the credit union.

(2) The Commission may revoke a licence of a credit union after it has been restricted for a period of time, after considering all the relevant facts and circumstances.

#### **Notice of intention to revoke**

**40.** The Commission shall, before it revokes a licence, serve the credit union written notice of the Commission's intention to revoke the licence—

- (a) specifying the grounds upon which the Commission proposes to revoke the licence;
- (b) specifying the date on which the proposed revocation is to take effect; and
- (c) requiring the credit union to submit to the Commission within a specified period, a written statement of any objections to the revocation of the licence.

#### **Decision to revoke**

**41.** Where the Commission has served a notice of the Commission's intention to revoke a licence, and the Commission has taken into account any objection made under section 40(c), the Commission shall make a determination to—

- (a) proceed to revoke the licence;
- (b) take no further action; or
- (c) take other regulatory action as may be permitted under section 77,

and the Commission shall inform the credit union, by notice in writing, of its final decision.

### **Notice of revocation**

**42.** Where the Commission decides to revoke the licence under section 41(a), the Commission shall serve the credit union notice of the revocation that shall include—

- (a) the date on which the credit union shall cease to carry on business;
- (b) a statement of the grounds for the decision; and
- (c) a statement on the rights of the credit union under section 46(1) and section 216.

### **Powers of Commission on a revocation**

**43.** Where the Commission serves a notice of revocation of a licence under section 42, the Commission may—

- (a) take charge of all books, records and assets of the credit union or any portion thereof;
- (b) apply to the Supreme Court to appoint a judicial manager; and
- (c) do all such things as may be necessary to safeguard the interests of members and creditors of the credit union until any appeal filed pursuant to section 46(1) has been determined.

### **Cessation of business on revocation**

**44.** Where a decision is made to revoke a licence under section 41, the credit union shall cease carrying on business from the date specified in the notice of revocation.

### **No right to make representations on revocation**

**45.** Where a notice of intention to revoke a licence under section 40 is followed by a notice revoking a licence under section 42, the latter notice shall have the effect of terminating any right to make representations to the Commission in respect of the revocation.

### **Appeal to Supreme Court on revocation**

**46.** (1) Where a credit union is aggrieved by a decision of the Commission to revoke its licence under section 41, the credit union may appeal to the Supreme Court within thirty days of the date of its receipt of the notice of revocation setting forth the grounds of appeal.

- (2) Where a decision is made to revoke a licence and—
  - (a) there is no appeal by the credit union within thirty days from the notice of revocation; or

- (b) the decision is not set aside by the Supreme Court, the Commission shall wind-up the credit union in accordance with section 186 or 187.

### **Publication of notice of revocation**

47. Within seven days of a credit union ceasing to hold a licence, the Commission shall publish notification of the revocation of the licence of a credit union in the *Gazette* and in at least two newspapers in national circulation and by electronic or any other means that the Commission considers appropriate.

### **Obligations of credit unions on revocation**

48. The revocation of a licence shall not relieve a credit union of any obligation incurred or assumed by it during the period of validity of the licence.

### **Credit unions to bear expenses of revocation**

49. The credit union shall bear the expenses incurred by the Commission to give effect to section 43, including costs in connection with—

- (a) utilities;
- (b) rent;
- (c) experts and specialist; and
- (c) the necessary expenses of maintaining the business of the credit union.

### **Commission to provide funds for inadequate liquidity**

50. Where the credit union does not have adequate liquidity to meet the costs referred to in section 49, the Commission may provide funding to cover such costs, which funding shall be treated as a loan by the Commission to the credit union and shall be repaid out of the funds of the credit union or, in the event that the credit union is liquidated, shall be a charge on the assets of the credit union.

### **Commission to give directions**

51. (1) The Commission may give a credit union directions—
- (a) when imposing or varying restrictions on a licence under section 28(2);
  - (b) when a credit union has been granted a variation of its existing business activities fails to comply with any condition imposed by the Commission under section 27(6);
  - (c) when issuing a notice of determination under section 34;

- (d) when serving a notice of revocation under section 42;
- (e) at any time after a notice of intention to revoke its licence has been given to the credit union, including the revocation of a licence;
- (f) when issuing a notice of cancellation under section 52(2); or
- (g) when the credit union remains liable to depositors.

(2) Where the Commission gives a credit union notice that it does not propose to take any further action pursuant to a notice under section 41, the Commission shall not give any further directions with respect to the notice under section 41.

(3) The Commission shall not give further directions to a credit union or a former credit union that has ceased to have any liability in respect of deposits.

(4) Any direction which is in force with respect to a credit union or former credit union when it ceases to have any liability pertaining to deposits shall cease to have effect.

(5) Where the Commission issues directions to a credit union, its board or any officer of the credit union under this Part, directions may, in particular—

- (a) require a credit union to—
  - (i) take certain steps;
  - (ii) refrain from adopting or pursuing a particular course of action; or
  - (iii) restrict the scope of its business in a particular way;
- (b) stipulate limitations on the acceptance of deposits and issuance of shares, the incurring of credit exposure or the distribution of surplus;
- (c) prohibit the credit union from accepting and soliciting deposits from members or prospective members;
- (d) prohibit the credit union from entering into any other classes of business activities as set out in Schedule 1;
- (e) subject to section 129 and after any representations made by the officer or the board of the credit union, require the removal of any officer or the board of the credit union; or
- (f) specify such other requirements as the Commission may think fit.

(6) A credit union or any member of the board of a credit union or officer shall comply with any requirement or prohibition imposed by a direction under this section.

(7) Section 85 shall apply, with such modifications as the circumstances require to a direction under this section.

(8) For the purposes of this section, a “former credit union” means a credit union which no longer holds a licence.

### **Cancellation of a licence**

**52.** (1) The Commission shall cancel the licence of a credit union where—

- (a) a winding up order has been made against it;
- (b) pursuant to sections 190 and 191, all its assets have passed into the ownership of another credit union;
- (c) a resolution for its voluntary winding up has been passed in accordance with section 188; or
- (d) the credit union is divided into two or more credit unions.

(2) A notice of intention is not required to be served in respect of the cancellation of a licence, and the Commission may proceed to issue a notice of cancellation stating the grounds referred to in subsection (1), for which the Commission has acted.

## **PART IV**

### **PRUDENTIAL REQUIREMENTS**

#### **Minimum level of institutional capital**

**53.** (1) A credit union shall—

- (a) at start-up have a minimum institutional capital of \$100,000;
- (b) between start-up and five years of operation have a minimum institutional capital of more than a \$100,000 or equivalent to 10% of the risk weighted assets as may be prescribed whichever is greater;
- (c) after five years of operation have a minimum institutional capital of more than \$100,000 or equivalent to 12% of the risk weighted assets as may be prescribed whichever is greater.

(2) A credit union which fails to maintain the minimum institutional capital under subsection(1) is liable to a penalty of \$20,000.

#### **Maintenance of statutory reserve**

**54.** (1) Subject to subsection(2) a credit union shall maintain a statutory reserve fund and shall, out of its net surplus of

each year transfer to that fund a sum equal to not less than 20% of net surplus whenever the amount of the statutory reserve fund is less than a hundred per cent of the institutional capital of a credit union.

(2) Where a credit union has incur or is likely to incur losses in any financial year, the Commission shall by order or direction take any of the following actions—

- (a) prohibit the credit union from declaring or distributing any dividends which are, in the opinion of the Commission, likely to cause it not to comply with capital requirements under section 53;
- (b) require the directors or officers of the credit union to provide a written explanation detailing the causes of those losses and the measures to be taken by the credit union to rectify the position and prevent future losses;
- (c) require the credit union to present a plan that is satisfactory to the Commission to reconstitute its capital adequacy within a period as may be determined by the Commission;
- (d) prohibit the credit union from awarding any bonus, or increments in the salary, emoluments and other benefits of all directors, officers and employees;
- (e) undertake more frequent inspection of the credit union; or
- (f) require additional or more frequent reporting.

### **Liquidity**

**55.** (1) A credit union shall maintain a minimum level of liquid assets in relation to current liabilities inclusive of all members' deposits and withdrawal shares and other short-term liabilities, as may be prescribed.

(2) A credit union shall comply at all times with the liquidity requirements issued by the Commission.

### **Variation of level of institutional capital**

**56.** (1) Notwithstanding sections 53 and 55, the Commission may direct a credit union to—

- (a) increase its capital in excess of the minimum amount required; or
- (b) increase its level of liquidity in such forms and amounts,

where it determines that the level of unmitigated risk faced by the credit union warrants additional capital and liquidity.

(2) The Minister may by Order on the recommendation of the Commission, vary the minimum institutional capital and liquid asset ratios.

### **Stabilisation Fund**

**57.** (1) Each credit union shall contribute each year to a stabilisation fund, in an amount to be prescribed.

(2) The Commission shall administer the stabilisation fund subject to the standards, conditions and limitations that are prescribed.

### **Investments**

**58.** (1) A credit union shall not invest the credit union's funds except in accordance with this Ordinance.

(2) The board of a credit union shall approve written policies for the investment of the credit union's funds.

(3) All investments and deposits of a credit union shall be made in the name of the credit union.

(4) A credit union's investments shall not exceed the limits to be prescribed where the class of business is listed as investments in Schedule 1.

(5) Where a credit union, in the course of satisfying debts due to the credit union, acquires shares or an ownership interest in an entity that would cause it to exceed any relevant limit set out in this Ordinance—

- (a) the credit union shall immediately notify the Commission in writing of the development; and
- (b) dispose of the shares or ownership interest within two years of the date of acquisition or within such additional time as the Commission may approve.

## **PART V**

### **SUPERVISION OF CREDIT UNIONS**

#### **Supervisory duties and powers**

**59.** The Commission shall—

- (a) examine all applications for approvals to be granted or issued under this Ordinance;
- (b) issue such directions as it thinks fit;
- (c) take corrective or remedial actions to ensure compliance with the Ordinance; and
- (d) and take and maintain such steps or proceedings as may be necessary for the winding-up of a credit union subject to this Ordinance.

### **Commission examination**

**60.** The Commission shall make or cause to be made, such on-site or other examination and inquiry into the affairs or business of each credit union from time to time or whenever the Commission considers necessary or expedient, in order to determine that the provisions of this Ordinance are being observed and that the credit union is in a sound financial condition; and each credit union shall be examined at least once every twenty-four months.

### **Access to records etc.**

**61.** (1) The Commission shall—

- (a) have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, of a credit union; and
- (b) have the right to call upon any member of the board of a credit union, any committee member or any officer, external auditor or employee of the credit union for any information or explanation the Commission considers necessary for the due performance of its duties.

(2) A credit union or a person referred to in subsection (1) shall provide access to an officer or officers of the Commission and shall furnish the Commission with such information as the Commission may require within the time specified by the Commission.

(3) A person shall not obstruct another person from providing access to the Commission or from furnishing information required by the Commission, pursuant to subsection (2).

(4) Where a person fails to comply with subsection (2), the Commission may, in addition to any other action that may be taken under this Ordinance, apply to the Supreme Court for an order requiring the person to comply, and on such application, the Supreme Court may so order or make any other order it thinks fit.

(5) Where the provisions of this Ordinance require anything to be done within a specified period of time and the person who is required to comply within the time limit prescribed is unable to do so because of the occurrence of force majeure or industrial unrest, riot, public disorder or any unnatural disaster or event, the Commission shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.

### **Power of Commission to request information**

**62.** (1) The Commission may require—

- (a) a credit union or any of its employees or agents;



- (b) an entity in which a credit union has a proprietary ownership interest;
- (c) an entity that is a related party;
- (d) a present or former director, officer, auditor or key operational staff of a credit union; and
- (e) a present or former director, officer, auditor, significant shareholder or key operational staff of any entity referred to in paragraphs (b) and (c),

to furnish such information in such form and within such period of time as the Commission may require.

(2) The Commission may—

- (a) require verification from the auditor of a credit union or any company, unincorporated body or entity referred to in subsection (1) of the accuracy of information submitted pursuant to that subsection;
- (b) require an officer or key operational staff of a credit union, to supply, within such time as may be specified, any information relating to the credit union or any related party, or person over which the credit union or directors, officers or key operational staff of the credit union have control; and
- (c) verify the accuracy of the information obtained pursuant to paragraphs (a) and (b) by inspecting the credit union, company or unincorporated body or entity.

(3) A requirement made under subsection (1) or (2) shall be in writing.

(4) The Commission may exercise the powers under subsection (1) in relation to any person who is elected as a member of the board of a credit union or appointed as an officer of a credit union to determine whether the person is a fit and proper person in accordance with the criteria set out in Schedule 2 to hold the particular position that he holds.

### **Powers of entry**

**63.** (1) The Commission or an authorised person may, subject to subsection (3), enter the premises of a credit union—

- (a) to inspect any books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form pursuant to this Ordinance and ask any relevant questions and to make any notes or take any copies of the whole or any part of any such record; and

(b) to determine whether there is compliance with this Ordinance.

(2) Where the books, records, accounts, vouchers, minutes of meetings, securities and any other documents including documents stored in electronic form referred to in section 62(1) are not in the possession of the credit union or any member of the board of a credit union, officer, external auditor or employee of a credit union, the Commission shall have the access set out in section 62(1) except that where the person in possession is in such possession by way of a lien, and the Commission or an authorised person, without prejudice to the lien, shall have access to the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form.

(3) Where the Commission in the exercise of the powers conferred on it under subsection (1) is—

- (a) prevented from exercising those powers;
- (b) required to exercise the powers outside of normal working hours; or
- (c) required to exercise the powers urgently,

the Commission may apply ex parte to a Judge of the Supreme Court for a warrant to enter the premises of the credit union stating the grounds for the exercise of the power.

(4) Where it is shown to the satisfaction of a Judge, on sworn information in writing, that it is necessary to enter the premises of a credit union for any purpose stated in subsection (3), the Judge may by warrant under his hand authorise entry on the premises of the credit union.

(5) Where the Commission or an authorised person enters any premises by virtue of this section he may take with him any other person that in his opinion is necessary to effect the purpose of the entry.

(6) A warrant issued under this section shall continue in force for such reasonable time as may be necessary to effect the purpose for which it was issued.

(7) An authorised person shall upon initial entry and in response to any later requests, produce proof of his identity as an authorised person to any person in relation to whom he is about to exercise, is exercising or has exercised the power of entry under this Ordinance.

### **Obstruction of entry**

**64.** Any person who directly or indirectly prevents the Commission, any authorised person or an officer or officers of the Commission from—

- (a) entering the premises of a credit union;

- (b) having access to its books, records or other documents, including electronically stored information; or
- (c) having the items in paragraph (b) made readily available, during a period of suspension,

commits an offence and is liable on summary conviction to a fine of \$10,000 and to imprisonment for one year.

### **Corrective action for unsafe and unsound business conduct**

**65.** (1) Where an on-site examination or off-site monitoring of the affairs of a credit union reveals that the credit union is conducting its business in an unlawful, unsafe or unsound manner or is otherwise in an unsound condition, the Commission may –

- (a) direct the credit union to engage an independent accountant or firm of accountants—
  - (i) to perform or conduct a review of its financial statements and accounting records; and
  - (ii) to advise the Commission and the credit union of the true financial condition of the credit union;
- (b) take all such other measures as it may consider necessary in accordance with section 77.

(2) Where a credit union—

- (a) does not meet the ratio of 112% in the solvency test set out in Schedule 3; or
- (b) meets the ratio of 112% in the solvency test but –
  - (i) is unable to meet its obligations as they become due;
  - (ii) has ceased paying its current obligations in the ordinary course of business; or
  - (iii) the aggregate of its property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations,

the Commission may take corrective action in accordance with sections 72 and 77.

(3) For the purposes of subsection (2), a reference to the obligations of a credit union includes a reference to its ability to pay deposits or shares without undue delay.

### **Failure to meet solvency ratio**

**66.** Without prejudice to sections 28 and 39 to 50, where the Commission is satisfied that a credit union has a technical

solvency ratio of 70% or less, the Commission shall direct the credit union in writing to comply with section 72(b) within a period of sixty business days.

### **Power to suspend**

**67.** Where the credit union fails to comply with section 66, the Commission shall, order the credit union to suspend business forthwith and—

- (a) where there are reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, the Commission may apply for an order of judicial management in accordance with section 159; or
- (b) where there are no reasonable grounds to believe that the circumstances leading to the order of suspension may be rectified, the Commission may apply to wind up the credit union in accordance with sections 186 and 187.

### **Commission to take charge of books**

**68.** Where the Commission orders that a credit union's business be suspended under section 67, it may also take charge of all the books, records, other documents, including electronically stored information, and assets of the credit union and to take all such measures as may be necessary to—

- (a) prevent the continuation in business by that credit union during the period of suspension; and
- (b) preserve the assets of the credit union.

### **Collection of loan payments and receivables during suspension**

**69.** (1) Notwithstanding sections 67 and 68, the Commission shall take all such measures as may be necessary to collect—

- (a) loan payments; and
- (b) all receivables due and owing to the credit union during the period of suspension, and any monies so collected shall be held in escrow during the period of suspension.

(2) All costs incurred by the Commission under section 68 and subsection (1) shall be treated as a loan by the Commission to the credit union and shall be repaid out of the funds of the credit union in the event that the credit union is liquidated.

### **Effect of suspension order**

**70.** An order made under section 67 shall cease to have effect on the appointment of a judicial manager or liquidator as the case may be.

### **Stay of actions**

**71.** Where the Commission suspends the business of a credit union under section 67, all claims, actions and the execution of all writs, summonses and other processes against the credit union shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the Supreme Court or unless the Supreme Court directs otherwise.

### **Corrective action for solvency ratios**

**72.** Where a credit union fails to meet the solvency ratio of a 110%, it shall attain a solvency ratio of—

- (a) 80% within the first year; and
- (b) 112% within five years,

following a direction from the Commission to correct its solvency ratio.

### **Non application of sections**

**73.** Sections 65 and 66 shall not apply to a credit union during the period specified in section 72 (a).

### **Submission of certain returns**

**74.** Every credit union or affiliate shall submit to the Commission within the period of time as may be specified by the Commission, and in such form as the Commission may from time to time require, returns containing—

- (a) *its* financial statements;
- (b) statements of its loans and advances including delinquency;
- (c) statements of its earnings and expenses;
- (d) statements of its assets and revenues related to non-financial business activities; and
- (e) statements of its any other financial data or information as the Commission may require, for examination by the Commission.

### **Submission of audited financial statements**

**75.** (1) The board of a credit union shall cause—

- (a) the accounts of the credit union to be audited annually by the external auditor,;

(b) the accounts of its affiliates to be reviewed annually by the external auditors,

and the credit union shall, within four months of the close of its financial year, submit the audited statements and the review reports to the Commission.

(2) Every audited statement submitted pursuant to subsection (1) shall be signed by two members of the board of the credit union.

(3) A separate audited statement of—

(a) income and expenditure; and

(b) assets and liabilities,

in relation to any non-financial activity shall be submitted in accordance with subsection (1).

### **Examination of returns and statements**

**76.** (1) Upon examination of the returns and audited financial statements referred to in sections 74 and 75, the Commission may—

(a) where it determines that the credit union's financial condition has deteriorated to cause risk to its safety and soundness, consult with the credit union and propose measures to prevent any further financial deterioration;

(b) where it determines that the credit union is insolvent based on the technical solvency test set out in Schedule 3, take such action as it sees fit in accordance with section 77; or

(c) where it determines that the credit union is operating in a manner that may result in insolvency or the winding up of the credit union, take such action as it sees fit in accordance with section 77.

(2) A credit union shall comply with any measure imposed by the Commission pursuant to the Commission's intervention under subsection (1), and the Commission may take such action as it sees fit in accordance with section 77.

### **Exercise of corrective action by Commission**

**77.** The Commission may take corrective action, as contained in Schedule 5, in order to—

(a) ensure the financial safety and soundness of a credit union;

(b) protect the depositors of a credit union;

(c) protect the creditors of a credit union;

- (d) protect the financial system of the Islands; or
- (e) bring about compliance with the Ordinance.

### **Engagement of an accountant**

**78.** (1) The Commission may engage the services of a suitably qualified accountant or firm of accountants to act under the direction of the Commission to determine the financial condition of a credit union.

(2) The Commission may adopt and act upon the report of the person referred to in subsection (1).

(3) The credit union shall pay for the cost of any accountant engaged under subsection(1).

### **Compliance directions**

**79.** Notwithstanding any other action or remedy available under this Ordinance, where in the opinion of the Commission, a credit union or any officer, employee or agent of the credit union or any other person under this Ordinance—

- (a) has committed, commits, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of the credit union;
- (b) has committed, commits, or is about to commit an act, or is pursuing or is about to pursue a course of conduct that may directly or indirectly be prejudicial to the interest of depositors;
- (c) has violated or is about to violate any provision of this Ordinance or the Proceeds of Crime Ordinance, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time; or
- (d) has breached any requirement or failed to comply with any measure imposed by the Commission in accordance with this Ordinance,

the Commission may issue a compliance direction directing the credit union, officer, employee or agent of the credit union, or person under section 21 to—

- (e) cease or refrain from committing the act, pursuing the course of conduct or committing the violation;
- (f) undertake such corrective action as in the opinion of the Commission is necessary to remedy the situation or minimize the prejudice to the credit union including increasing the capital and providing additional liquidity; or

- (g) limit its business activities or place constraints or conditions on the conduct or promotion of its business.

### **Pre-direction compliance notice**

**80.** Subject to section 82(2), before a compliance direction is issued, the credit union to which the direction is to be issued shall be served with a notice specifying—

- (a) the facts of the matter;
- (b) the directions that are intended to be issued; and
- (c) the time and place at which the person served with the notice may make representations to the Commission.

### **Issue of compliance directions**

**81.** Where, after considering the representations made in response to the notice referred to in section 80, the Commission determines that the facts or any part of the facts specified in the notice are established, the Commission may proceed to issue compliance directions to the person served with the notice.

### **Interim compliance direction**

**82.** (1) Notwithstanding section 80, where in the opinion of the Commission, the length of time required for representations to be made might be prejudicial to the interests of members of the credit union, the Commission may make an interim compliance direction with respect to the matters referred to in section 79 which shall have effect for a period of not more than twenty days.

(2) An interim compliance direction made under subsection (1) continues to have effect after the expiration of the twenty day period referred to in that subsection if no representations are made to the Commission within that period or, if representations have been made, the Commission notifies the person to whom the compliance direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

### **Failure to attend hearing**

**83.** Where a person served with the notice referred to in section 80 fails to attend at the time and place stipulated by the said notice, the Commission may proceed to issue compliance directions in the absence of such representations.

### **Board of credit union to inform members of compliance directions**

**84.** The Commission may, where it considers such action necessary and appropriate, direct the board of a credit union to



inform its members that a compliance direction by the Commission has been issued.

### **Application to Supreme Court for orders on a compliance direction**

**85.** Where a person to whom a compliance direction is issued fails to comply with the compliance direction, the Commission may, in addition to any other action that may be taken under this Ordinance, apply to the Supreme Court for an order requiring the person to—

- (a) comply with the compliance direction;
- (b) cease the contravention; or
- (c) do anything that is required to be done,

and on such application, the Supreme Court may so order and make any other order it thinks fit.

### **Failure to comply with compliance directions**

**86.** A person who fails to comply with a compliance direction commits an offence and is liable on summary conviction—

- (a) in the case of a credit union, to a fine of \$15,000 and, in the case of a continuing offence, to a fine of \$1,000 for each day that the offence continues; or
- (b) in the case of a member of the board or officer of a credit union, to a fine of \$15,000 and to imprisonment for two years.

### **Cancellation, revocation of compliance direction**

**87.** Where the Commission considers that a compliance direction is no longer necessary, he may cancel the notice to issue a compliance direction or revoke the compliance direction or confirm to the credit union that the requirements of the direction have been met.

### **Injunctive relief**

**88.** Where the Commission reasonably believes that a person is in violation of the Ordinance, or is engaged in any activity or course of conduct described under section 79 the Commission may, in addition to, or in lieu of other actions authorised under this Ordinance—

- (a) seek a restraining order or other injunctive or equitable relief, to prohibit the continued violation or prevent the activity or course of conduct in question; or
- (b) pursue any other remedy which may be provided by law.

### **Commission to collect statistics**

**89.** (1) The Commission shall collect statistics in relation to credit union business.

(2) Every credit union shall, for the purpose of enabling the Commission to collect statistics referred to in subsection (1), furnish the Commission with information in such form and at such times as specified by the Commission.

### **Commission to maintain registers**

**90.** (1) The Commission shall maintain such registers as may be required or authorised to be maintained under this Ordinance and the Regulations, and in particular, shall maintain separate registers of credit unions to whom the Commission has issued licences to carry on the various classes of credit union business in the Islands pursuant to sections 15 and 20.

(2) No later than the thirty-first day of March in each year, the Commission shall publish in the *Gazette*, and in at least two newspapers in national circulation and by electronic or any other means the Commission thinks appropriate, a list of credit unions authorised to carry on credit union business in the Islands.

### **Annual report**

**91.** The Commission shall provide a written report to the Minister on an annual basis with respect to the performance of the Commission in meeting its objectives under this Ordinance and the Minister shall lay the report before the House of Assembly.

## **PART VI**

### **MEMBERSHIP**

#### **Qualifications for membership**

**92.** (1) A person shall be eligible for membership of a credit union, if that person—

- (a) is either a Turks and Caicos Islander, or ordinarily resident in the Islands;
- (b) has attained the age of eighteen;
- (c) is of sound mind; and
- (d) has with the other members of the credit union some common bonds of philosophy, occupation or association or of residence in a defined neighbourhood or district.

(2) A non-profit company or a company incorporated in the Islands under the Companies Ordinance, is eligible for membership in a credit union

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

(4) A person, who is duly admitted to membership shall enjoy all the rights of that credit union and shall be subject to all the liabilities of membership and any other liabilities existing in law.

(5) Without prejudice to anything contained in this section, provision may be made in the by-laws of a credit union specifying the qualifications for membership.

### **Application for membership**

**93.** An application for membership of a credit union shall be submitted to the board of a credit union in the form specified in the by-laws.

### **Membership requirements**

**94.** (1) A person may not exercise the rights of membership of a credit union unless he has acquired such number of permanent shares, and has satisfied any other requirement, as may be expressed in the by-laws.

(2) A credit union shall keep a register of members and permanent shares in which shall be recorded—

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

(3) In this section a “nominee” means a person nominated by a member as the beneficiary, to whom shall be transferred, upon the death of the member, the member’s deposit, shares and any other interest in the credit union.

### **Withdrawal of membership**

**95.** (1) A member of a credit union may at any time withdraw from membership on the condition as may be specified in the by-laws of the credit union.

(2) Withdrawal from a credit union by a member shall be by written notice addressed to the secretary of the board of the credit union.

(3) When a member withdraws from a credit union any existing liability remains in effect.

### **Expulsion of members**

**96.** (1) Where a member fails to comply with the Ordinance, any regulations made under the Ordinance or the by-laws, in any way detrimental to the interests of the credit union, that member may be expelled from the credit union by a vote of 2/3 of the members present at a special meeting called upon to expel the member.

(2) The board of the credit union shall communicate the reasons for the proposed expulsion not less than one week before the meeting.

(3) The member shall have an opportunity to be heard at the special meeting where the members may—

- (a) vote on the motion to expel the member; or
- (b) withdraw the motion.

### **Cessation of membership**

**97.** Where a member ceases to qualify for membership under this Ordinance, regulations made under this Ordinance or the by-laws, the board of the credit union shall cause his name to be struck off the register of members but such striking off shall be without prejudice to any existing liability of the member under this Ordinance.

### **Voting rights**

**98.** (1) A member of a credit union shall not be allowed to vote by proxy.

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

(3) A credit union that is a member of another credit union shall exercise its voting rights in that other credit union through one of its members duly appointed as a delegate.

### **Liability of members**

**99.** Subject to this Ordinance or the by-laws of a credit union, a member is liable for the credit union's liability up to, either the amount, if any, unpaid on his permanent shares or to such amount as the members may respectively undertake by the by-laws to contribute to the assets of the credit union in the event of being wound up.

PART VII  
SHARES AND DEPOSITS

**Members' shares**

**100.** (1) A credit union may offer an unlimited number of shares to its members.

(2) Notwithstanding subsection (1), no member may hold more than 1/5 of the shares of a credit union.

**Permanent shares**

**101.** (1) A credit union may issue permanent shares to its members.

(2) Permanent shares shall form part of the credit union's institutional capital and are not withdrawable.

(3) Permanent shares shall not be used as collateral for a loan.

(4) The holder of a permanent share may receive dividends on his shares.

(5) Permanent shares shall not be resold to or redeemed by the credit union, except in special circumstances on the prior written approval of the Commission.

(6) Permanent shares may be transferred from one member to another member on terms and conditions established by the credit union.

(7) The holder of a permanent share shall remain a member of the credit union whether or not he ceases to hold any other class of shares in the credit union.

(8) A credit union shall identify on its balance sheet withdrawable shares and shall differentiate between its withdrawable and permanent shares for reporting purposes under this Ordinance.

**Deposits**

**102.** A credit union may receive a deposit from a member only upon terms that it is either for a fixed period of time or withdrawable on demand.

**Withdrawals**

**103.** Except for withdrawable shares pledged to loans or otherwise encumbered and permanent shares, all shares of a credit union shall be withdrawable on demand or with a required period of notice as stipulated by the credit union.

### **Members' statement**

**104.** A credit union shall provide each member, at least quarterly, with a statement indicating –

- (a) the balance of funds standing to the member's share, deposit and loan accounts; and
- (b) all transactions affecting the account since the date of the previous statement.

### **Distributions from equity**

**105.** (1) The directors of a credit union may recommend a dividend only if—

- (a) payment will be made from realised surplus which excludes any extraneous gain;
- (b) any impairment of institutional capital of the credit union has been corrected;
- (c) all allowances for impaired assets and loan losses have been fully funded;
- (d) all prior-year losses have been written off; and
- (e) the accounts have been audited.

(2) Subject to the restrictions set out in subsection (1)(b) to (e), the board of a credit union may recommend a distribution from undivided surplus or retained earnings.

## **PART VIII**

### **LOANS AND LIMITATIONS**

#### **Loans**

**106.** (1) A credit union shall make loans to its members only in accordance with this Ordinance.

(2) Loans granted under this section shall not exceed 25% of the institutional capital of the credit union, in aggregate.

#### **Approval of loans**

**107.** (1) Subject to section 112, the credit committee or any officer so empowered by the credit committee may approve loans to members.

(2) The board of a credit union shall approve a policy for the granting of secured and unsecured loans.

(3) The policy referred to in subsection (2) shall include the terms and conditions of repayment, the maximum amounts of such loans and the acceptable forms of security.

### **Forms of security**

**108.** The assignment of an interest in real or personal property or the assignment of deposits or shares other than permanent shares shall be considered acceptable forms of security.

### **Disclosure of interest rates, related fees, etc.**

**109.** A credit union shall, at the time of providing a credit facility to a member, in a written statement, disclose to the member the cost of borrowing, including the rate of interest and related fees.

### **Loans to officers and employees**

**110.** A credit union may make loans to its officers and employees in accordance with policies and procedures established by the credit union in accordance with this Ordinance.

### **Forms of loans to persons, officers and employees**

**111.** With the exception of a loan made to an employee as a benefit of employment, loans made to the persons referred to in section 110 shall be made on terms no more favourable than are available to other members of the credit union.

### **Conditions for loans to officers and employees, etc.**

**112.** Subject to section 113, no loan shall be made to an officer or employee of a credit union of a sum in excess of the value prescribed for in regulations.

### **Exemption from loan conditions**

- 113.** Section 112 does not apply to a loan that is—
- (a) approved at a meeting of the members of the board of a credit union and the credit committee at which a quorum of each of the board of the credit union and the credit committee is present, except the officer to whom the proposed loan is to be made; or
  - (b) made with the consent in writing of all the members of the board of the credit union and the credit committee, except the officer to whom the proposed loan is to be made.

### **Delinquent loans**

**114.** Where a loan facility extended to a member of the board of a credit union becomes delinquent, the board of the credit union shall immediately notify him to this effect.

### **Failure to remedy delinquency**

**115.** Where a member of the board of a credit union fails to remedy the delinquency within thirty days of notification, he is deemed to have resigned from his post with effect from the thirty-first day after the date of notification.

### **Additional days to remedy delinquency**

**116.** Notwithstanding section 115, the Commission may defer the effective date of resignation of the member of the board of a credit union by an additional thirty days where the member gives the Commission an undertaking, in writing, that funds have been identified which would be used to remedy the delinquent loan.

### **Effective date of resignation on a delinquency**

**117.** Where a member of the board of a credit union fails to remedy the delinquency after the period referred to in section 115, he is deemed to have resigned from his post with effect from the first day after the expiration of the period referred to in section 116.

### **Treatment of interest**

**118.** A credit union shall not include as income in a credit union's account interest payable by the borrowers on delinquent loans.

### **Credit exposure**

**119.** The aggregate of credit exposures of a credit union shall not exceed such percentage as may be specified in prudential standards issued by the Commission.

### **Related party exposures**

**120.** (1) A credit union shall only engage in business activities with a related party in accordance with this Ordinance.

(2) Any credit exposure incurred by a credit union to a related party under this section shall be—

(a) on terms and conditions no less favourable to the credit union than the terms and conditions on which such credit exposure is generally offered by the credit union; and

(b) subject to the approval of the board of the credit union where such exposure accounts for 10% or more of the institutional capital of the credit union.

(3) Where, in the opinion of the Commission, a credit exposure incurred by a credit union to a related party exposes the credit union to excessive risk, or does not accord with the terms



and conditions referred to in subsection (2)(a), the Commission may require the credit union to set aside or direct that changes be made to the credit exposure, or require the credit union to limit or reduce the credit exposure.

### **Borrowing by a credit union**

**121.** A credit union may borrow only on terms and conditions that are in accordance with prudential standards issued by the Commission.

### **Restrictions on investment in real property**

**122.** (1) A credit union may hold or acquire real property directly or indirectly without limits where such real property is held or acquired solely for the purpose of conducting the business of a credit union.

(2) Where a credit union acquires land in the course of satisfying debts due to it, and where the holding of such land or interest in it would cause the credit union to exceed the non-financial business activities limits set out in this Ordinance, it shall not beneficially hold such land or any interest in it for—

- (a) a period longer than five years from the date of acquisition; or
- (b) a period additional to the period referred to in paragraph (a), as may be approved by the Commission.

## **PART IX**

### **BOARD MEMBERS AND OFFICERS**

#### **Criteria for membership**

**123.** (1) The board of a credit union shall comprise individuals who—

- (a) are not less than eighteen years of age;
- (b) are of sound mind;
- (c) are members of the credit union; and
- (d) meet the criteria set out in Schedule 2.

(2) The board of a credit union shall comprise the number fixed by the by-laws, which shall be no less than five persons and no more than seven persons

(3) The members of the board of a credit union shall be persons of recognised standing and experience in one or more the following areas—

- (a) accounting,
- (b) the business of credit unions,

- (c) finance,
- (d) banking,
- (e) investment,
- (f) economics,
- (g) law,
- (h) auditing, or
- (i) other related disciplines.

(4) Three of the members of the board shall have recognised standing and experience in the areas under subsections 3(a),(d) and (g).

(5) A member of the board of a credit union not in possession of any of the qualifications or the experience referred to in subsection (3), shall provide to the Commission proof of having attained training in finance and accounting, including the ability to read and understand a balance sheet and income statement, and governance or credit administration or credit risk, within eighteen months of being elected or appointed to the board of a credit union.

(6) A credit union shall be responsible for determining whether a person meets the criteria under subsection (1)(d).

(5) A person nominated for membership to the board of a credit union shall declare his membership on the board of any other credit union to the nomination committee where applicable, and to the annual general meeting of the credit union.

### **Terms of service**

**124.** (1) Subject to subsection (2), a member of a board of a credit union may serve a maximum of two consecutive terms, with each term not exceeding three years, and may be eligible for re-election—

- (a) immediately after the expiration of the first term; or
- (b) one year after the expiration of the second term.

(2) The chairman of a board of a credit union may serve a maximum of five consecutive years as chairman and may be eligible for re-appointment as chairman three years after the expiration of the five year period.

### **Change in membership**

**125.** The board of the credit union shall, within fourteen days of any change in the membership of the board or officers of the credit union, notify the Commission in writing of such change.

### **Failure to comply with membership and service**

**126.** A person or the board of a credit union shall comply with the provisions set out in sections 123 to 125 and where a person is not in compliance, the Commission may take such action as it sees fit in accordance with section 77.

### **Persons debarred from management**

- 127.** (1) A person who has been—
- (a) a director, member of the board or officer of a company or entity in the seven year period immediately preceding a winding up order being made by a court or the date that the company or entity had been placed in receivership;
  - (b) adjudged bankrupt under any written law in relation to bankruptcy and insolvency; or
  - (c) a member of the board or an officer of a former credit union that has had its licence revoked, unless such revocation was due to—
    - (i) the credit union being reconstructed; or
    - (ii) its voluntary winding up,

shall not, without the express approval of the Commission, act or continue to act as a member of the board or officer of a credit union or, be concerned in any way in the management of a credit union.

- (2) A person who—
- (a) has been convicted by a court for an offence involving fraud, dishonesty, a contravention of the Proceeds of Crime Ordinance or any other written law in relation to the prevention of money laundering and combating the financing of terrorism which may be in force from time to time;
  - (b) has been convicted of an offence under this Ordinance; or
  - (c) is not a fit and proper person in accordance with the criteria specified in Schedule 2, shall not act or continue to act as a member of the board or officer of, or be concerned in any way in the management of, a credit union.

(3) Notwithstanding section 123(5), where for the purpose of subsection (2)(c) a person is not regarded, or is no longer regarded as fit and proper by the Commission, the Commission shall serve a notice on the credit union and where appropriate, on the person concerned to the effect that the Commission proposes to disqualify the person from being a member of the board or officer of a credit union, stating the reasons for its decision and particulars of the rights conferred by subsection (4).

(4) The credit union and the person concerned may, within the period of seven days, commencing from the day after which the notice under subsection (3) is served, make written representations to the Commission and the Commission shall take such representations into account in deciding whether or not to disqualify the person from acting as a member of the board or officer of the credit union.

(5) The Commission shall inform the credit union and the person concerned, by notice in writing, of its final decision.

(6) Where the decision of the Commission referred to in subsection (5) is to disqualify the person, that person shall forthwith cease to be a member of the board or officer of the credit union.

### **Duties and responsibilities of a board of a credit union**

**128.** (1) The board of a credit union shall be responsible to the members of the credit union, for the management of the business affairs of the credit union and in pursuance of these duties the board of a credit union shall conduct the affairs of the credit union with transparency and accountability.

(2) The board of a credit union shall prepare an annual declaration to the Commission within four months after the close of the financial year—

(a) stating—

(i) whether the credit union is in compliance with this Ordinance and any prudential standards issued by the Commission; and

(ii) where the credit union is not in compliance, the areas of noncompliance with this Ordinance and any prudential standards issued by the Commission;

(iii) that the elected officers are fit and proper; and

(iv) where any elected officer is not fit and proper, the name of the officer;

(b) providing a current listing of the composition of the board and statutory committees; and

(c) indicating which of its members of the board, if any, currently serve on other credit union boards and the names of those credit unions.

(3) The chairman shall submit the declaration referred to in subsection (2) to the Commission within four months after the close of its financial year.

(4) In addition to the duties set out in the credit union's by-laws, the board of a credit union shall—

- (a) approve such policies as are required for all major business activities of the credit union, in particular, the lending, investment, liquidity and asset-liability management, accounting, and audit and internal control systems;
- (b) have charge of the investment of funds, except that the board of the credit union may designate an investment committee or any qualified professional to invest the credit union's funds in accordance with any investment policies established by the board of the credit union;
- (c) approve an annual operating budget for the credit union, which shall include provisions for the compensation of employees;
- (d) perform any other duty that is necessary and proper to carry out the purposes and exercise the powers of the credit union in accordance with this Ordinance; and
- (e) give the Commission full access to all books, papers, records and other sources of information under its control, as requested by the Commission and in a timely manner.

(5) In addition to any liability for failure of a board of a credit union to comply with subsection (2), the Commission may require the board of a credit union to take such action as it thinks fit as specified in Schedule 5 within a specified period to effect compliance with subsection (2).

#### **Directions for removal of officers**

**129.** The Commission may give directions to the board of the credit union to serve a notice on an officer for his removal or may dissolve the board of a credit union where, in the opinion of the Commission—

- (a) the board of a credit union or officer fails to adhere to its statutory duties and responsibilities outlined in the Ordinance; or
- (b) the board of the credit union or officer has improperly performed its or his duties.

#### **Dissolution of board of a credit union**

**130.** Where the Commission determines that the board of a credit union shall be dissolved the Commission shall—

- (a) notify the board of that credit union in writing, stating that the board is dissolved and shall appoint an interim board; and
- (b) publish a notice in the *Gazette* and in at least two newspapers in national circulation stating that the

board has been dissolved and that an interim board has been appointed.

### **Interim Board**

**131.** (1) Where the board of a credit union has been dissolved under any other circumstance or for any other reason, the Commission shall appoint an interim board.

(2) A person who is appointed to a board of a credit union under section 130 shall—

- (a) exercise the powers and perform all the functions as a duly constituted board;
- (b) make arrangements prior to the end of their term of management for the election of a new board in accordance with the by-laws of the credit union;
- (c) have access to all books, accounts, securities, documents, vouchers, cash, articles or things held by the credit union; and
- (d) submit a monthly report to the Commission in such form as the Commission may require and upon the completion of the period of management, submit a final report to the Commission.

### **Remuneration and expenses**

**132.** The Commission may determine the remuneration and expenses to be paid to a person appointed under section 130 and any moneys required for this purpose shall be payable from the funds of the credit union.

## **PART X**

### **COMMITTEES**

#### **Supervisory Committee**

**133.** (1) Every credit union shall have a supervisory committee which shall be elected by the members at the annual general meeting.

(2) The supervisory committee shall consist of the number fixed by the by-laws, which shall be no fewer than three.

(3) A person who is—

- (a) a member of the board of a credit union; or
- (b) a member of the credit committee; or
- (c) an employee of the credit union,

is not eligible to be a member of the supervisory committee.

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

(5) Where a vacancy occurs in the supervisory committee, the supervisory committee members may fill all vacancies until the next annual meeting of the credit union.

### **Duties of the supervisory committee**

- 134.** (1) The supervisory committee shall—
- (a) examine the books of the credit union;
  - (b) confirm the cash instruments, property and securities of the credit union;
  - (c) confirm the deposits of the members; and
  - (d) perform such other duties under the Ordinance, regulations made under this Ordinance and under the by-laws of the credit union.
- (2) The supervisory committee shall—
- (a) meet at least every two months, and where no auditor has been appointed pursuant to section 151, shall meet monthly and shall at each meeting examine the affairs of the credit union;
  - (b) meet with the board of directors of the credit union at least quarterly.
- (3) The supervisory committee shall keep minutes of its meetings and shall—
- (a) lodge the minutes of such meetings with the secretary of the credit union;
  - (b) within seven days of each meeting, report the results in writing to the board of directors; and
  - (c) submit a written report to the annual meeting of the members of the credit union.

### **Compliance officer**

**135.** (1) The board of directors of a credit union shall with the prior written approval of the Commission appoint a senior officer of the credit union to monitor and periodically report to the supervisory committee and the board on the levels of awareness of, adherence and compliance of the credit union with this Ordinance and on the internal operations of the credit union.

(2) The compliance officer shall ensure the credit union is in compliance with the relevant legislation on the prevention of money laundering and terrorist financing.

(3) The board of directors of a credit union may appoint such persons as it considers necessary to assist the supervisory committee in its duties, and may pay those persons remuneration as it thinks fit.

### **Internal audit function**

**136.** (1) Every credit union shall establish an internal audit function.

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

(3) The board of a credit union may appoint—

- (a) a senior officer of the credit union; or
- (b) a chartered accountant,

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

(3) The internal audit function shall be performed independently of other departments in the credit union and the internal auditor shall report to the supervisory committee on—

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

### **Misappropriation, etc.**

**137.** (1) When the supervisory committee has reasonable cause to believe that—

- (a) the funds, securities or other property of the credit union have been misappropriated or misdirected; or
- (b) the by-laws of the credit union, this Ordinance or regulations made under this Ordinance have been contravened by the board of directors of the credit union, the credit committee or an officer or employee engaged by the board of directors of the credit union, the supervisory committee shall forthwith inform the board of directors of the credit union and the Commission in writing.

(2) The supervisory committee shall forthwith request the board of the credit union to appoint an auditor or some other body to assist it in determining whether any of the funds, securities or other property of the credit union have been misappropriated or misdirected and the remuneration of any auditor or other body so



appointed shall be determined by the supervisory committee and paid by the credit union.

(3) In any case where the board of a credit union fails to appoint an auditor within the initial period of fourteen days after a request is made pursuant to subsection (2), the supervisory committee shall appoint an auditor within seven days next following the end of the initial period.

(4) In the event of a misappropriation or misdirection or a suspected misappropriation or suspected misdirection as referred to in subsection (1), the supervisory committee may recommend the suspension of any member of a board of a credit union to the Commission in writing and the Commission may suspend any member of the board of a credit union by notice in writing, if the Commission is of the view that there are reasonable grounds for the suspension.

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

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

(7) The members of a credit union may, by resolution, dismiss from office any person suspended under subsection(4), and when the members of the credit union do not dismiss from office any person so suspended, that person shall be reinstated forthwith.

### **Ceasing to be a member of the supervisory committee**

**138.** When a member of the supervisory committee fails to attend three consecutive meetings of the committee without having a reasonable cause, or fails to perform any of the duties allotted to him as a member of the committee, his position on the committee may be declared vacant by the remaining members of the committee who may appoint a qualified person to fill the vacancy until the next annual meeting of the credit union.

### **Removal by members from the supervisory committee**

**139.** (1) The members may, by resolution passed by 2/3 of the votes cast at a special meeting called for the purpose, remove a member of the supervisory committee before the expiration of his term of office, and shall by a vote cast at the meeting elect another member in his place for the unexpired portion of his term.

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

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

### **Credit committee**

**140.** (1) Every credit union shall have a credit committee which shall consist of no less than three members and no more than five members, who shall be determined in accordance with the procedure fixed in the by-laws.

(2) The by-laws of the credit union may provide for appointment or election and retirement of members of the credit committee in rotation.

(3) A person who—

(a) is a member of the board of directors;

(b) is a member of the supervisory committee; or

(c) is an employee of the credit union;

is not eligible to serve as a member of the credit committee.

(4) The credit committee shall comprise of persons with recognised standing and experience in the following areas—

(a) accounting;

(b) finance;

(c) lending;

(d) credit;

(e) banking.

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

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

(7) Where a vacancy occurs in the credit committee, the board of directors may fill the vacancy until the next annual meeting of the credit union.

### **Duties of credit committee**

**141.** The credit committee shall perform such duties under this Ordinance, regulations made under this Ordinance and under the by-laws of the credit union.

### **Ceasing to be a member of the credit committee**

**142.** When a member of a credit committee appointed by the board of the credit union fails to attend three consecutive meetings without, in the opinion of the board of the credit union, having a reasonable cause or fails to perform any of the duties allotted to him as a member of the committee, his position on the committee may be declared vacant by the board who may then appoint a qualified person to fill the vacancy until the next annual meeting of the credit union.

### **Removal by members from the credit committee**

**143.** (1) The members may, by resolution passed by 2/3 of the votes cast at a special general meeting called for the purpose, remove an elected member of the credit committee before the expiration of his term of office, and shall at that meeting elect another member in place of the first mentioned meeting for the unexpired portion of his term.

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

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

### **Loan approval**

**144.** (1) The board of a credit union may, upon such terms and conditions as it specifies, authorise the manager or other employee of the credit union to approve loans to members within the approved limits set out in the by-laws of the credit union.

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

### **Credit committee reports**

- 145.** The credit committee shall—
- (a) meet at least once every month;
  - (b) keep minutes of its meetings;

- (c) submit a report to the board of the credit union stating—
  - (i) the number of loan applications received;
  - (ii) the number of category of loans granted;
  - (iii) the security obtained for such loans;
  - (iv) applications denied; and
  - (v) delinquent loans.
- (d) submit an annual report on the matters referred to in paragraph (c) to the annual meeting of the credit union.

### **Other committees**

**146.** (1) The Commission may require a credit union to establish other committees such as an investment committee, a risk management committee or any other committee that it considers necessary, taking into account the credit union's risk profile.

(2) At least one member of the board of a credit union shall be a member of a committee established under subsection (1).

(3) At least one member of the risk management committee and the investment committee shall have recognised standing and experience in any one of the following disciplines—

- (a) auditing;
- (b) financial management; or
- (c) accounting practices.

(4) Notwithstanding subsection (3), the Commission may, after taking into account the risk profile of the credit union, require that at least two individuals on each of the committees referred to in subsection (3), possess the experience referred to in that subsection.

### **Risk management committee**

**147.** The function of the risk management committee shall be to manage the various forms of risk to which the credit union may be exposed, including credit, market, liquidity, operational and legal risks, and the risk management committee shall keep the board of the credit union informed of the credit union's risk exposure by submitting regular reports to the board of the credit union at the intervals agreed to between the board of the credit union and the committee.

### **Investment committee**

**148.** (1) The function of the investment committee shall be to recommend to the board of the credit union the investment

policies and to coordinate and oversee the investment portfolio of the credit union.

(2) In addition to the requirements referred to in subsection (3), each member of the investment committee shall have knowledge or experience in investment risks and liquidity management.

(3) The investment committee shall monitor and report to the board of the credit union on the performance of the credit union's investment portfolio and its adherence to approved policies.

### **Declaration of interest**

**149.** (1) A person who serves as—

- (a) an officer;
- (b) an employee; or
- (c) a member of the board,

of a credit union attending a meeting of the credit union or of the board of a credit union who is any way, whether directly or indirectly, interested in a matter before the credit union or the board of the credit union, shall declare his interest to the board of the credit union and absent himself during the deliberations concerning his declaration of interests.

(2) The board of a credit union, excluding the member of the board of a credit union referred to in subsection (1)(c), shall determine whether this interest is sufficiently material so as to constitute a conflict of interest.

(3) In the event that the board of a credit union finds that the interest is such as to constitute a conflict of interest, an individual referred to in subsection (1) attending a meeting of the credit union or of the board of the credit union shall not take part in any deliberations or vote on that matter, and shall absent himself during such deliberations.

(4) For the purposes of this section, a person referred to in subsection (1) attending a meeting of the credit union or of the board of the credit union shall be deemed to have an interest in a matter if he or a related party has a pecuniary interest in a matter before the credit union or before the board of the credit union.

### **Conflict of interest**

**150.** A person who serves as a member of the board of a credit union shall not be employed by a business, engage in professional activity, or own an interest in a business that may—

- (a) require him to disclose information acquired during his service on the board of another credit union or in his employment in another credit union; or

- (b) impair his independence or judgment in the performance of his duties or his responsibilities, to the credit union.

## PART XI

### AUDIT

#### **Appointment of external auditor**

**151.** (1) The external auditor shall be appointed by the members of the credit union at each annual general meeting, upon recommendation of the board of a credit union pursuant to section 129(1), and the prior approval of the Commission.

(2) An accountant or a firm of accountants is eligible to conduct an audit of a credit union if the accountant or at least one member of the firm of accountants—

- (a) is a practising member in good standing of the Turks and Caicos Islands Society of Professional Accountants or a professional association approved by the Commission;
- (b) has knowledge and experience in the audit of financial institutions or credit unions; and
- (c) is independent of the credit union and the elected officers of the credit union.

(3) Notwithstanding subsection (2)(a), the holder of a practising certificate from a professional association of accountants other than that referred to in subsection (2)(a) or a professional accountant may conduct the audit of a credit union subject to the prior written approval of the Commission.

(4) For the purpose of subsection (2)(c), a person is not independent and is disqualified from being an external auditor of a credit union—

- (a) if that person, any partner of an entity or any member of a firm of accountants of which that person—
  - (i) is a member, officer or employee of the credit union;
  - (ii) is a business partner of any officer or employee of the credit union; or
  - (iii) has been a liquidator, trustee in bankruptcy, receiver or receiver-manager of the credit union within the two years immediately preceding the appointment of the person as the auditor of the credit union; or
- (b) if the firm of accountants of which that individual is an employee, has been a liquidator, trustee in

bankruptcy, receiver or receiver-manager of the credit union within the two years immediately preceding the appointment of the person as an auditor of the credit union.

### **Replacement of external auditor**

**152.** (1) A credit union shall advise the Commission in writing and provide reasons where it proposes to replace an external auditor or where an individual or an entity for any reason ceases to be the external auditor of the credit union.

(2) Any person who resigns as an external auditor of a credit union or decides not to seek reappointment as external auditor shall inform the Commission in writing of his reasons and provide any further information that the Commission may require.

### **Auditor's management letter**

**153.** The board of the credit union shall submit a copy of the external auditor's final management letter to the Commission within seven days of receipt from the external auditor.

### **Commission may appoint an external auditor in special circumstances**

**154.** (1) The Commission shall, whenever it considers it necessary, cause arrangements for the services of the external auditor of the credit union or any other person to be made available, at the expense of the credit union, to conduct an independent audit, a special study, or a diagnostic review of a credit union, in accordance with the instructions of the Commission and to report the findings or results to the Commission.

(2) Where a credit union fails to appoint an external auditor satisfactory to the Commission, the Commission may appoint an external auditor for the credit union at the expense of the credit union.

(3) The Commission may pay the costs that may be incurred in arranging for the services of the external auditor but the costs shall be recoverable from the credit union.

### **Further audit requirements**

**155.** (1) The external auditor of a credit union shall report annually and at such other times as requested, in writing to the Commission, on the adequacy of the accounting procedures, records and such internal control systems of the credit union as may be discovered during the normal course of the credit union's annual audit.

(2) The Commission may, by notice in writing to a credit union, require the credit union's external auditor to comply with such other reporting requirements as the Commission may

stipulate in addition to generally accepted auditing standards employed in relation to the report referred to in subsection (1).

(3) The Commission—

- (a) shall, in relation to the audit of a credit union, have access to the external auditor's working papers representing a period not exceeding five years preceding the date of submission of the audit report; and
- (b) may require the external auditor of a credit union to provide the Commission with any further information that the Commission considers relevant.

(4) Every credit union shall pay the expenses incurred by its external auditor in the performance of his duties and obligations set out in this Part.

### **Duty of auditor to report**

**156.** Where the external auditor of a credit union discovers, in the ordinary course of an audit, any transactions or conditions which, in the opinion of the external auditor meets one or more of the following criteria—

- (a) any change in accounting policy or any presentation of, or any failure to present facts or figures which, in the opinion of the auditor, has the effect of misrepresenting the financial position of the credit union;
- (b) transactions that have a significant or material impact on the credit union;
- (c) transactions or conditions giving rise to significant risks or large exposures that have the potential to jeopardise the financial viability of the credit union;
- (d) transactions or conditions indicating that the credit union has significant weaknesses in internal controls which render it vulnerable to significant risks or large exposures that have the potential to jeopardise its financial viability; and
- (e) any other transactions or conditions which, in the opinion of the external auditor, should be included in a report under this section,

the external auditor shall report such findings in writing to the board of the credit union and to the Commission as soon as they are discovered.

### **Protection of external auditor**

**157.** (1) Any duty to which a current or former external auditor of a credit union may be subject shall be regarded as



contravened by reason of his communication in good faith to the Commission, whether or not in response to a request made by either of them, for any information or opinion on a matter to which this section applies, and which is relevant to any function of the Commission under this Ordinance.

(2) In relation to an external auditor of a credit union, this section applies to any matter of which he becomes aware in his capacity as external auditor and that relates to the business or affairs of the credit union or any member of the board or officer of a credit union or relative of such individuals or entities in relation to which the information is given, inclusive of information supplied under section 155.

### **Liability of the auditor**

**158.** (1) Notwithstanding section 157, where the Commission has reasonable grounds to believe that the auditor of a credit union—

- (a) has failed to perform his duties or to comply with the provisions of this Ordinance;
- (b) has been a party to the preparation of or has rendered an unqualified opinion on a financial statement that does not fairly present the financial position of the credit union; or
- (c) is incompetent or has engaged in professional misconduct,

the Commission shall deliver a written report to the credit union and as appropriate, the Turks and Caicos Islands Society of Professional Accountants or such other professional association that may, in the opinion of the Commission, be relevant.

(2) Where the Commission has made a report under subsection (1) in good faith, the Commission shall not be subject to any action, claim or demand by, or any liability to, any person in respect of which the report was made.

(3) An auditor of a credit union who—

- (a) knowing that a financial statement does not fairly present the financial position of a credit union; or
- (b) being reckless as to whether a financial statement fairly presents the financial position of a credit union, renders an unqualified opinion on the financial statement,

commits an offence and is liable on summary conviction to a fine of \$15,000 and to imprisonment for three years.

## PART XII

### JUDICIAL MANAGEMENT, SUSPENSION AND LIQUIDATION

#### **Judicial management**

- 159.** (1) Where the Commission is satisfied that—
- (a) a ground for revocation under section 39(1) exists;  
or
  - (b) the credit union has failed to submit financial statements and returns in accordance with sections 74 and 75 so that the true financial position of the credit union is uncertain, and where the Commission is of the opinion that it is necessary or proper for the credit union or any part of its business to be placed under judicial management,

it may apply to the Supreme Court for an order of judicial management.

(2) The provisions of subsection (1)(a) shall not apply to section 39(1)(d) or (e).

#### **Resolution for judicial management**

**160.** Subject to section 159, where the board of a credit union is of the opinion that it is necessary or proper for the credit union or any part of its business to be placed under judicial management, it may, by resolution of not less than three-quarters of all the members present and voting at a special general meeting called for that purpose, agree to apply to the Supreme Court for an order that it or any part of its business be placed under judicial management.

#### **Notice of intent to apply for judicial management**

**161.** Pursuant to section 158, the board of a credit union shall give the Commission one month's notice in writing of its intention to apply to the Supreme Court for an order that it or any part of its business be placed under judicial management.

#### **Right to be heard on application**

**162.** Where an application is made to the Supreme Court under section 159 the credit union and the Commission, shall be entitled to be heard on the application.

#### **Stay of actions, processes, etc.**

**163.** Where an application is made under section 161 for an order in respect of any credit union, all actions and the execution of all writs, summonses and other processes against the credit union and the Commission, by virtue of this section, shall be

stayed and shall not be proceeded with, without the prior leave of the Supreme Court or unless the Supreme Court directs otherwise.

### **Order for judicial management**

**164.** An order for the judicial management of a credit union shall be subject to the provisions of sections 79 and 159 to 173.

### **Appointment of judicial manager**

**165.** The Supreme Court shall appoint a judicial manager who shall receive such remuneration from the credit union as the Supreme Court may direct and it may at any time cancel the appointment and appoint some other person as the judicial manager.

### **Costs and expenses of judicial manager**

**166.** The Supreme Court may, if it thinks fit, charge the remuneration costs and the expenses of the judicial manager on the property of the credit union in such order of priority, in relation to any existing charges on that property, as it thinks fit.

### **Vesting on judicial management**

**167.** Where an order for judicial management is made under section 164, the management of the credit union shall, on and after the date specified in the order, vest exclusively in the judicial manager.

### **Role of officers, employees, etc. under judicial management**

**168.** (1) The judicial manager may suspend or retain the services of any or all the officers and employees of the credit union and the officers so retained shall conduct the affairs of the credit union subject, however, to any directions of the judicial manager or the Supreme Court.

(2) The directors, officers and agents of the credit union, other than its auditors, shall give every assistance to the judicial manager for the purpose of facilitating the performance of his functions as judicial manager, including the supply of information or explanation in such form as may be required, the production of books, documents, minutes, cash, securities and vouchers, and generally the provision of all necessary facilities required for the performance of any function, save that in the case of its auditors they shall only be required to supply any information which is in their possession or knowledge.

### **Acceptance of new deposits, shares, etc.**

**169.** Any person who is appointed judicial manager shall not, except with the leave of the Supreme Court, accept any new deposits, issue new shares, or grant any new loans or pay any dividends or distribution from equity to members.

### **Directions and control by Supreme Court**

**170.** (1) The Supreme Court may from time to time issue to the judicial manager such directions regarding his powers and duties as it considers necessary.

(2) The judicial manager shall act under the control of the Supreme Court and may at any time apply to the Supreme Court for instructions on the manner in which he shall conduct the judicial management or in relation to any matter arising in the course of the judicial management.

### **Reports to the Commission by judicial manager**

**171.** The judicial manager shall—

- (a) give a report on the status of the judicial management to the Commission on a monthly basis;
- (b) provide the Commission with such information as it may from time to time require;
- (c) report to the Commission whenever he intends to apply to the Supreme Court for instructions; and
- (d) in the application under paragraph (c), furnish the Commission with particulars of the application.

### **Reports to the board of the credit union**

**172.** (1) Where an application is made by a credit union for the appointment of a judicial manager pursuant to section 160 the judicial manager shall, in addition to the reporting requirements under section 171—

- (a) give a report on the status of the judicial management to the board of the credit union on a monthly basis;
- (b) provide the board of the credit union with such information as it may from time to time require;
- (c) report to the board of the credit union whenever he intends to apply to the Supreme Court for instructions; and
- (d) in an application under paragraph (c), furnish the board of the credit union with particulars of the application.

(2) The Commission and the board of a credit union shall be entitled to be heard on any application made pursuant to section 170 and either the Commission or the credit union may make an application to the Supreme Court to be heard on any matter relating to the conduct of the judicial management.

### **Judicial manager to file final report**

**173.** (1) The judicial manager shall conduct the management with the greatest economy compatible with efficiency, and shall as soon as possible but no later than one year after his appointment, file with the Supreme Court a report stating which of the following courses in the circumstances, in his opinion, is the most advantageous to the general interests of the members of the credit union:

- (a) the transfer of the business of the credit union to some other credit union;
- (b) the carrying on of its business by the credit union;
- (c) the winding up of the credit union or of any part of its business; or
- (d) the dealing with part of the business of the credit union in one manner and with another part in another manner.

(2) Where the judicial manager is unable to file the report pursuant to subsection (1) within the time set out in that subsection, he shall apply to the Supreme Court for an extension of time for filing the report, stating the grounds for such application.

(3) The judicial manager shall, as soon as he has filed the report pursuant to subsection (2), furnish a copy to—

- (a) the Commission, where the application was made by the Commission under section 159; or
- (b) the board of the credit union and the Commission, where the application was made by the credit union under section 160, and make a written application to the Supreme Court for an order to give effect to the course stated in the report.

(4) The report or a copy of the report shall be open for inspection by any person during official hours at the registry of the Supreme Court in which the report is filed or at such other place as the Commission determines.

(5) Where the judicial manager recommends the transfer of the business of the credit union in accordance with subsection (1)(a)—

- (a) he may consider the views of the membership of the credit union to be transferred by means of a special general meeting or any other means he considers appropriate; and
- (b) the Commission shall assess whether the proposed transfer meets the criteria of section 192(2)(b) and advise the Supreme Court of its assessment during the hearing under section 174.

### **Decision of Supreme Court on report of judicial manager**

**174.** (1) The Supreme Court shall, on the hearing of an application made under section 173—

- (a) after hearing the Commission, the judicial manager and any other individual or entity who, in the opinion of the Supreme Court ought properly to be heard; and
- (b) after considering the report of the judicial manager, make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the members of the credit union.

(2) An order of the Supreme Court under subsection (1) shall be binding on all persons, and shall have effect notwithstanding anything contained in the by-laws of the credit union.

### **Supreme Court may cancel contracts**

**175.** The Supreme Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 142 is in force with respect to a credit union and after hearing all persons who, in the opinion of the Supreme Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the Supreme Court thinks just, any contract or agreement, other than a contract relating to deposits and shares which the Supreme Court is satisfied is detrimental to the interests of the members of the credit union.

### **Indemnity**

**176.** The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in the exercise of, or in connection with, the exercise of the powers conferred on him under this Part, unless it is shown that the act or omission was in bad faith.

### **Cancellation of judicial management order**

**177.** (1) The judicial manager, the Commission, the credit union or any interested person who, in the opinion of the Supreme Court is entitled to be heard, may at any time, apply to the Supreme Court for the cancellation of an order made by the Supreme Court under section 164.

(2) Upon an application being made under subsection (1), the Supreme Court may cancel the order if it appears to the Supreme Court that—

- (a) the purpose of the order has been fulfilled; or

(b) it is undesirable for the order to remain in force.

(3) Upon the cancellation of an order, the judicial manager shall be divested of the management which shall then vest in the members of the board of the credit union, the liquidator or receiver or receiver-manager appointed by the Supreme Court, where applicable.

### **Suspension of operations**

- 178.** (1) Where the Commission is satisfied that—
- (a) a credit union is unlikely to meet the demands of the depositors of the credit union; or
  - (b) a credit union's continuation in business is likely to involve a loss to the members of the credit union or to the creditors of the credit union,

it may determine to suspend the operations of the credit union.

### **Suspension order**

**179.** The Commission may, after considering all the relevant facts and circumstances, order the credit union to suspend business forthwith for a period of sixty days and may take charge of all the books, records, other documents including electronically stored information, and assets of the credit union and to take all such measures as may be necessary to prevent the continuation in business by that credit union during the period of suspension and to preserve the assets of the credit union and all costs incurred shall be a first charge on the assets of the credit union.

### **Effect of suspension**

**180.** Notwithstanding any other written law, no action or proceedings may be instituted in any court for the purpose of securing the enjoining, review or revocation of any order made or direction given under section 179 or in respect of any loss or damage incurred or likely to be, or alleged to be incurred by reason of such order or direction.

### **Stay of claims, actions, etc.**

**181.** All claims, actions and the execution of all writs, summonses and other processes against the credit union shall, by virtue of this section, be stayed and shall not be proceeded with, without the prior leave of the Supreme Court or unless the Supreme Court directs otherwise.

### **Cessation of suspension order**

- 182.** An order made under section 179 shall cease to have effect—
- (a) where the Commission makes a further order permitting the credit union to resume business

either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the members and potential members of the credit union and other creditors of the credit union; or

- (b) upon the expiration of the period of sixty days from the day on which it is made, unless—
  - (i) the Commission extends the order for a period not exceeding a further sixty days; and
  - (ii) a petition is made to the Supreme Court by the Commission, for the winding up of the credit union on behalf of its members.

### **Winding up of credit union by Supreme Court**

**183.** For the purposes of section 182(b), the Supreme Court may order the winding up of a credit union in accordance with the Companies Ordinance subject to the modification that the credit union may be ordered to be wound up on the petition of the Commission on behalf of its members.

### **Suspension on a petition to wind up**

**184.** Where the Commission has suspended the business of a credit union and a petition for winding up is made by the Commission, a credit union shall remain in suspension and shall not carry on business while the petition is pending unless it is authorised by the Supreme Court and on such conditions, as the Supreme Court may specify.

### **Failure to allow access to credit union, books, etc.**

**185.** Any person who directly or indirectly prevents the Commission from having access to a credit union, its books, records or other documents, including electronically stored information, or fails to make them available, commits an offence and is liable on summary conviction to a fine of \$15,000 and to imprisonment for five years.

### **Involuntary liquidation**

- 186.** (1) Where the Commission—
- (a) in its discretion, determines that all regulatory actions taken to strengthen or correct any area of the operations have failed;
  - (b) finds that the credit union is insolvent based on the technical solvency test set out in Schedule 3; or
  - (c) in its discretion, determines to revoke the credit union's licence, the Commission may issue a notice to wind-up the credit union.



(2) The Commission shall, before exercising the power conferred on it by subsection (1), signify its intention to issue a winding up order—

- (a) by giving written notice to the board of the credit union of its intention to do so specifying the grounds upon which the Commission proposes to wind-up the credit union; and
- (b) require the credit union to submit to the Commission within a specified period, a written statement of any objections to the issue of the winding up notice.

(3) Where the Commission has served a notice of its intention to issue a winding up order and has taken into account any objections made under subsection (2)(b), the Commission shall decide whether to—

- (a) issue a winding up order; or
- (b) take such other regulatory action as may be permitted under this Ordinance.

(4) Where the Commission decides to issue a winding up order, the Commission shall serve the credit union a winding up order that shall include—

- (a) the date on which the winding up takes effect;
- (b) the statement of the grounds for the decision; and
- (c) the rights of the credit union under section 215,

and may appoint a liquidator.

(5) Where the Commission serves an order of winding up under subsection (4), it shall proceed to cancel the licence.

(6) On the issuance of a winding up order under subsection (4), the assets and liabilities of the credit union shall vest in the Commission or the liquidator, as the case may be, who shall take charge of all books, records and assets of the credit union and do all such things as may be necessary to safeguard the interests of members and creditors of the credit union until any appeal filed pursuant to subsection (9) has been determined.

(7) Where the Commission issues an order for winding up under subsection (4) the business of the credit union shall cease.

(8) Notwithstanding subsection (7), under the direction of the liquidator appointed by the Commission, the credit union shall continue to discharge its debts, pay operating expenses, collect money owed to it, distribute its assets and perform all acts required to wind-up its affairs.

(9) A credit union who is aggrieved by a decision of the Commission to issue a winding up order under subsection (4), may appeal to the Supreme Court within fourteen days of the date of its

receipt of the notice of winding up setting forth the grounds of appeal.

### **Petition for winding up**

**187.** (1) Notwithstanding section 186, the Commission may petition the Supreme Court for the winding up of a credit union in accordance with the Companies Ordinance.

(2) The Commission shall not present a petition except by leave of the Supreme Court, and leave shall not be granted unless—

(a) a prima facie case has been established to the satisfaction of the Supreme Court; and

(b) security for costs for such amount as the Supreme Court may think reasonable has been given.

(3) The procedure governing petitions made to the Supreme Court in this section and for the enforcement of orders and for all matters incidental to a petition shall be that provided for by the Companies Ordinance and any other written law.

(4) Notwithstanding subsection (3), a petition by the Commission may be heard ex parte.

### **Voluntary liquidation**

**188.** (1) A credit union may voluntarily liquidate and wind-up its affairs subject to the prior approval of the Commission.

(2) The Commission shall not approve a voluntary winding up unless it is satisfied that the winding up will be effected in a manner that would not pose undue risk to the members of the credit union.

(3) A credit union that wishes to commence a voluntary winding up, shall submit to the Commission—

(a) a copy of the resolution of its membership to voluntarily wind-up the credit union, passed by not less than 3/4 of all the members present and voting at a special general meeting called for the purpose;

(b) audited financial statements of the credit union for the periods specified by the Commission;

(c) the external auditor's report in relation to the financial statements referred to in paragraph (b); and

(d) such other information as the Commission may require.

(4) The Commission shall, within thirty days of receipt of the documents referred to in subsection (3), communicate to the credit union, its approval or non-approval of the voluntary winding up of the credit union.

(5) Where the Commission approves the application of a credit union for voluntary winding up, the credit union shall—

(a) within fourteen days of such approval, give notice of the resolution—

(i) to its members in such form and containing such information as the Commission may require; and

(ii) by advertisement in the *Gazette* and in at least two newspapers in national circulation and by electronic or any other means the Commission considers appropriate; and

(b) apply to the Supreme Court for winding up.

(6) Upon receipt of an order of the Supreme Court approving an application for voluntary liquidation of a credit union, a copy of the order shall be filed with the Commission, by the credit union, and the Commission shall cancel the credit union's licence.

### **Undue delay by a liquidator**

**189.** (1) The liquidator appointed pursuant to section 187 or 187, shall conduct the liquidation of a credit union with due diligence.

(2) Where the Supreme Court, on application of the Commission, a contributory, or a creditor, is satisfied that the liquidator is acting with unreasonable delay or is failing or has failed to carry out any duty imposed in this Part or under any other written law, the Supreme Court may—

(a) direct the liquidator to carry out that duty;

(b) remove the liquidator and appoint another liquidator; or

(c) make such other order as it thinks fit.

(3) Where an application has been made under subsection (2), the Supreme Court may consider all relevant factors in deciding whether the delay was unreasonable, including the following:

(a) the length of the delay;

(b) the complexity of the liquidation;

(c) the reasons for the delay; and

(d) the conduct of the liquidator, the Commission and the applicant.

### **Reconstruction of credit unions**

**190.** Reconstruction of a credit union may be effected by—

(a) amalgamation with another credit union to form a single credit union;

- (b) the transfer of a credit union's assets and liabilities to another credit union; or
- (c) the credit union dividing itself into two or more credit unions.

### **Amalgamation of credit unions**

**191.** (1) Any two or more credit unions may, with the approval of the Commission, by resolution passed by not less than 3/4 of all the members present and voting at a special general meeting called for such purpose, amalgamate as one credit union.

(2) On the passing of the resolution referred to in subsection (1), each credit union shall first apply to the Commission for the cancellation of its licence and thereafter apply to the Commissioner for cancellation of its registration.

(3) Upon completion of the procedure set out in subsection (2), applications shall be made to—

- (a) the Commission, to be licensed as a financial co-operative society with the words “credit union” in its name; and
- (b) the Commission, for a licence in the name of the amalgamated credit union.

(4) The licensing of the amalgamated credit union shall be sufficient conveyance to vest the assets and liabilities of the amalgamating credit unions in the amalgamated credit union.

### **Transfers**

**192.** (1) A credit union may, subject to the approval of the Commission, transfer its assets and liabilities to any other credit union which has agreed to the transfer.

(2) A credit union that wishes to transfer its assets and liabilities to another credit union shall submit to the Commission—

- (a) a copy of a resolution of its membership, agreeing to transfer the assets and liabilities of the credit union to a transferee credit union, passed by not less than 3/4 of all the members present and voting at a special general meeting called for such purpose;
- (b) a copy of a resolution of the membership of the transferee credit union agreeing to the transfer of assets and liabilities of a transferor credit union, passed by not less than 3/4 of the members of that transferee credit union present and voting at a special general meeting called for such purpose; and
- (c) an application for the cancellation of its licence.

(3) Upon the approval of the transfer and the cancellation by the Commission of the transferor's licence, the assets and liabilities of the transferor shall vest in the transferee.

### **Divisions**

**193.** (1) A credit union may, subject to the approval of the Commission, by a resolution passed by 2/3 of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more credit unions.

(2) The credit union shall submit a copy of the resolution referred to in subsection (1) to the Commission and provide the Commission with the following information:

- (a) how the assets and liabilities of the credit union will be divided among the new credit unions; and
- (b) proof of the satisfaction of the claims of all the creditors and such other individuals or entities who have given notice of intention to demand payment of moneys due to them.

(3) On the passing of the resolution referred to in subsection (1) the credit union shall apply to the Commission for cancellation of its licence.

(4) Upon completion of the procedures set out in subsections (2) and (3), applications shall be made to—

- (a) the Commission to be licensed as a financial co-operative society with the words "credit union" in its name; and
- (b) the Commission for a licence in the names of the proposed divided credit unions.

(5) Registration of the divided credit unions shall be sufficient conveyance to vest the assets and liabilities of the dividing credit union into the divided credit unions.

### **Notice of amalgamation required**

**194.** Notwithstanding sections 191 to 192, no amalgamation, transfer or division of a credit union shall be effected—

- (a) unless a person whose interests may be affected by the reconstruction of the credit unions concerned and the Commission are given three months written notice of the proposed reconstruction; and
- (b) where a creditor objects in writing to the proposal, his claims against the credit union are first satisfied.

### **Vesting of assets**

**195.** The licensing of new credit unions established pursuant to section 192 shall be sufficient to vest the assets and liabilities of

the original credit union in the new credit unions in the manner specified in the resolution. as confirmed under subsection (1) of that section.

### **Winding up**

**196.** Where a petition is made by the Commission to the Supreme Court for the winding up of a credit union—

- (a) the credit union shall not carry on business during the pendency of the petition unless it is authorised to do so by the Supreme Court and except in accordance with any conditions that may be specified by the Supreme Court; and
- (b) the Supreme Court, if it is of the opinion after conducting an inquiry as it may consider necessary, that the credit union—
  - (i) is not insolvent;
  - (ii) is able to meet the minimum capital adequacy requirement; and
  - (iii) is able to meet the demands of its members and its continuation in business is not likely to involve a loss to its members and creditors,

may permit the credit union to resume business either unconditionally or subject to such conditions as the Supreme Court may consider necessary in the public interest or the interests of the members and other creditors of the credit union but shall otherwise order that the credit union be wound up.

## **PART XIII**

### **DEPOSIT INSURANCE SCHEME**

#### **Interpretation**

**197.** In this Part “Scheme” means the Deposit Insurance Scheme established under section 198.

#### **Establishment of the Scheme**

**198.** (1) There is hereby established a Deposit Insurance Scheme for all credit unions licensed under this Ordinance.

(2) A credit union licensed under this Ordinance shall be a member of the Scheme.

(3) The Scheme shall be administered by the Commission.

#### **Financing the Scheme**

**199.** (1) The Government may make an initial advance contribution to the Commission for the establishment of the Scheme.

(2) On the establishment of a credit union the initial advance shall be utilised to finance the deposit of the credit union to the Scheme in an amount fixed as a percentage of the credit union's deposits.

(3) The credit union shall repay over a period of ten years the amount advanced to the credit union under subsection(2) by an annual premium.

(4) The Commission may assess for each credit union an annual premium as may be prescribed until the total amount available in the Scheme is equivalent to 2% of the deposits of the credit union or any percentage that may be prescribed.

### **Payment to depositors**

**200.** In the event of any insolvency of a credit union licensed under this Ordinance, a member of the credit union shall receive in payment under the Scheme, the amount of his deposit which is to be prescribed.

### **Non-payment to directors. etc**

**201.** A director or senior manager or officer of a credit union, in the event of an insolvency, shall only receive payment under the Scheme after payment to the depositors under section 200.

### **Usage of the funds from the Scheme**

**202.**The Commission may use the funds of the Scheme to—

- (a) provide guaranteed compensation to depositors where a credit union is insolvent or is to be wound up;
- (b) pay compensation on the verifiable claim from a member of a credit union;
- (c) invest the premiums in high quality investments as may be prescribed to preserve the capital.

## **PART XIV**

### **REGULATIONS AND GUIDELINES**

### **Regulations**

**203.** (1) The Minister may, on the recommendation of the Commission, make Regulations for the purpose of giving effect to the provisions of this Ordinance and in particular but without prejudice to the generality of the foregoing, such regulations may contain provisions relating to—

- (a) prudential criteria;
- (b) licences;

- (c) the deposit insurance scheme; and
- (d) any matter required to be prescribed under this Ordinance.

(2) Regulations made under subsection (1) shall be subject to negative resolution of the House of Assembly.

### **Draft regulations**

**204.** (1) Subject to subsection (2), before the making of any regulations pursuant to section 203, the Commission shall submit the proposed regulations in draft form to credit unions and other affected persons.

(2) Where, in the opinion of the Minister after consultation with the Commission, any matter proposed to be dealt with in regulations or by amendment has become urgent, the Minister may proceed to make regulations under section 203 or any amendments, without following the process referred to in subsection (1), and the Commission may subsequently consult with the credit unions for a period of twenty days.

(3) Regulations made under subsection (2) shall continue to have effect unless replaced by regulations proposed pursuant to subsection (1).

### **Prudential standards**

**205.** (1) The Commission may issue prudential standards to—

- (a) facilitate compliance with this Ordinance;
- (b) enable the Commission to meet its objectives; or
- (c) aid compliance with the Proceeds of Crime Ordinance, or any other written law in relation to the prevention of money laundering and combating the financing of terrorism, which may be in force from time to time.

(2) Contravention of a prudential standard referred to in subsection (1) shall not constitute an offence, but this shall not prevent the Commission from taking action under section 77.

### **Consultation on prudential standards**

**206.** (1) Before making or amending prudential standards referred to in section 205, the Commission shall issue draft guidelines or draft amendments and shall consult with the credit unions.

(2) Where, in the opinion of the Commission, any matter proposed to be dealt with in prudential standards or by an amendment has become urgent, the Commission shall proceed to issue the prudential standards or amendments without following



the process referred to in subsection (1), and may subsequently consult with the credit unions.

(3) Prudential standards made under subsection (2) shall continue to have effect unless replaced by prudential standards issued pursuant to subsection (1).

### **Amendment of Schedules**

**207.** (1) Subject to subsection (2), the Minister may, by Order, on recommendation of the Commission, amend the Schedules to this Ordinance.

(2) Any amendment to Schedule 4 shall be subject to negative resolution of the House of Assembly.

## **PART XV**

### **MISCELLANEOUS**

#### **Discharge of liability**

**208.** (1) The Commission may issue to any person who there is reasonable cause to believe has committed an offence referred to in the First Column of Schedule 4, a notice offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in the Fifth Column of Schedule 4.

(2) Where a person is given notice under this section, criminal proceedings shall not be taken against him for the offence specified in the notice until the expiration of twenty-one days commencing from the day after which the notice was served.

#### **Administrative fines**

**209.** Administrative fines under this section shall be calculated with reference to the credit union's asset size where a credit union's assets—

- (a) are \$1,000,000 or lower, it shall pay 50% of the administrative fine prescribed in Schedule 4;
- (b) exceed \$1,000,000 it shall pay 100% of the administrative fine prescribed in Schedule 4;

#### **Failure to pay administrative fine**

**210.** Where a person fails to pay the administrative fine referred to in section 209 or where he pays the administrative fine but continues to commit the offence after the expiration of twenty-one days following the date of receipt of the notice, the credit union shall be liable on summary conviction for the original offence committed.

### **Payment of administrative fine**

**211.** Payment of an administrative fine under this section shall be made to the Commission and in any criminal proceedings against an offender referred to in this section, a certificate that payment of the administrative fine was, or was not made to the Commission by the specified date shall, if the certificate purports to be signed by the Commission, be admissible as evidence of the facts stated therein.

### **Form of notices**

**212.** (1) A notice under subsection (1) shall—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state—
  - (i) that criminal proceedings shall not be laid until the expiration of twenty-one days from the date of receipt of the notice where payment of the administrative fine is made and the commission of the offence is discontinued;
  - (ii) the amount of the administrative fine and the fact that it is to be paid to the Commission; and
  - (iii) the places where payment of the fine is to be made.

(2) In any proceedings for an offence to which this section applies, no reference shall be made to the giving of any notice under this section or to the payment or non-payment of an administrative fine, unless in the course of the proceedings or in a document which is before the Supreme Court in connection with the proceedings, reference has been made by, or on behalf of the accused to the giving of a notice, or, as the case may be, to such payment.

### **Minister to make Orders for notice, information, etc.**

**213.** The Minister may, by Order, provide for any matter incidental to the operation of this section, and in particular, any such Order may prescribe—

- (a) the form of notice under this section;
- (b) the nature of the information to be furnished to the Commission along with any payment; and
- (c) the arrangements with regard to any payment or non-payment pursuant to a notice under this section.

## **Financial fraud on members**

**214.** (1) A person who perpetrates a financial fraud on members commits an offence.

(2) A director or officer of a credit union that—

- (a) falsifies the accounts of the credit union which leads to a loss of members' funds;
- (b) uses members' funds for his own benefit or for the benefit of his relatives and persons connected with him which leads to a loss of members' funds;
- (c) provides to the Commission false or misleading financial data or other relevant information with the intent to conceal true financial position of a credit union;
- (d) does anything which is in contravention of this Ordinance, regulations or by-laws and which leads to a loss to members,

commits a financial fraud on members.

(3) A person found guilty of an offence under this section is liable on summary conviction to a fine of \$20,000 and to imprisonment for five years.

(4) It shall be a defence for any person charged with an offence under subsection (2) (d) to prove that—

- (a) he dissented to the decision that is material to the charge;
- (b) his dissent was recorded in the minutes of the relevant meeting; and
- (c) he submitted a report of his dissent to the Commission.

## **Offences and penalties**

**215.** (1) Any person or credit union who contravenes a provision listed in the First Column of Schedule 4 commits an offence and is liable on summary conviction to the penalty specified in the Second Column in the case of a person or the Third Column in the case of a credit union.

(2) Any person or credit union who contravenes any provision of this Ordinance for which no penalty is expressly provided commits an offence and is liable on summary conviction—

- (a) in the case of a person, to a fine not exceeding \$5,000 and to imprisonment for two years and in the case of a continuous offence, to fine of \$1,000 for each day the offence continues; or

(b) in the case of a credit union, to a fine not exceeding \$10,000, and, in the case of continuous offence, to a fine of \$2,000 for each day the offence continues.

(3) Where a person is liable under subsection (2), the offence shall be deemed to be continued so long as the default continues.

(4) A person who, in purported compliance with any requirement under this Ordinance, furnishes any information, provides any explanation or makes any statement which he knows or has reasonable cause to believe to be false or misleading, commits an offence.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with this Ordinance or any Regulations, or which he is liable to be so required to produce, commits an offence and is liable on summary conviction to a fine of \$10,000 and to imprisonment for five years.

(6) A person who fails to comply with the provisions of section 90 or who obstructs an individual in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a credit union, to a fine of \$5,000 and in the case of a member of the board, officer or employee of the credit union, to a fine of \$5,000 and to imprisonment for two years.

(7) Notwithstanding subsection (6), the Commission may in addition, apply to the Supreme Court for an order requiring the person to comply with the restriction or measure imposed, and on such application, the Supreme Court may so order and make any other order it thinks fit.

(8) In any proceedings for an offence under this Ordinance it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by any person under his control.

(9) In any proceedings for an offence under this Ordinance or Regulations where it is proved that the person charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine three times the amount stipulated in subsection (2) or imprisonment for five years and this penalty shall be in addition to any other penalty under this Ordinance.

(10) The Supreme Court may, in addition to any other punishment it may otherwise impose under subsection (9)—

(a) order the person to comply with the requirement in respect of which the person was convicted; or

(b) where it is satisfied that, as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary

benefits accrued to a related party of the convicted person order the convicted person to pay restitution to the party deceived or defrauded, in an amount equal to the Supreme Court's estimation of those monetary benefits.

(11) Where an offence committed by a credit union is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any officer of the credit union or any person who was purporting to act in any such capacity, he, as well as the credit union, commits an offence and is liable to be proceeded against and punished accordingly.

(12) Where a person is convicted of an offence under this Ordinance, the Supreme Court may, in addition to any punishment it may impose, order that person to comply with any provision of this Ordinance, the contravention of which he has been convicted.

### **Appeals**

**216.** (1) Any person who is aggrieved by a decision of the Commission—

- (a) to disqualify any individual under section 127, from being a director or officer on the ground that he is not a fit and proper individual;
- (b) to refuse a plan for approval for a merger or transfer under sections 190 and 191;
- (c) to wind up a credit union pursuant to section 186; and
- (d) which, in the opinion of a credit union, might be contrary to any provision of this Ordinance,

may appeal against the decision to the Supreme Court within fifteen days of receipt of the decision.

(2) During the pendency of an appeal, any order, decision or direction made or given by the Commission shall continue in force and be binding unless, on an inter partes application, the Supreme Court is satisfied that exceptional circumstances exist that warrant the grant of a stay of any further action by the Commission in respect of any such order, decision or direction, for such period as the Supreme Court considers appropriate.

### **Power to amend by-laws**

**217.** (1) A credit union may, subject to this Ordinance make or amend its by-laws including the by-law which declares the name of the credit union.

(2) No amendment of the by-laws of a credit union shall be valid until that amendment has been approved by the Commission, for which purpose three copies of the amendment shall be forwarded to the Commission.

(3) If the commission is satisfied that the amendment of the by-law, is not contrary to this Ordinance, the Commission may approve the amendment.

(4) Where the Commission refuses to register an amendment of a by-law, an appeal shall lie to the Supreme Court whose decision shall be final.

(5) An amendment which changes the name of a credit union shall not affect any right or obligation of the credit union or of any of its members or past members and any legal proceedings pending may be continued by or against the credit union under its new name.

(6) Where the Commission approves an amendment of the by-laws of a credit union, the Commission shall issue to the credit union a copy of the amendment certified by it which shall be conclusive evidence of the fact that the amendment has been approved.

### **Consequential amendments**

**218.** The Dormant Accounts Ordinance is amended in section 2—

(a) in the definition of “account provider” by—

(i) inserting after paragraph(b) the following new paragraph (c)—

“(c) credit union;”;

(ii) renumbering the existing paragraph(c)as paragraph (d).

(b) inserting in the appropriate alphabetical order the following definition—

“credit union” means a company licensed to carry on credit union business under the Credit Union Ordinance;”.

## SCHEDULE 1

*(Sections 2, 14(2), 51(5)(d), 58(4))*

### CLASSES OF BUSINESS ACTIVITIES OF A CREDIT UNION

<b>Business Activities</b>	<b>Description</b>
Deposit Taking	Accepting deposits from members on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union.
Loans	Granting of loans and other credit to members on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union.
Investment	Investment of funds by means of placement of deposits or purchase of securities
Mortgage Business	Mortgage lending; subject to the approval of the Commission.
Transaction Services	Debit cards, credit cards and mobile wallet products and operate a proprietary payment network; subject to the approval of the Commission.”

## SCHEDULE 2

*(Sections 13(1)(h), 31(a), 62(4), 123(1)(d), 127(2)(c))*

### FIT AND PROPER PERSON

1. Every person who is, or is to be a member of the board of the credit union, director, or officer of the credit union must be a fit and proper person to hold the particular position which he holds or is to hold.

2. In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of members of the credit union are likely to be, in any way, threatened by his holding that position.

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

- (a) been convicted of an offence involving fraud or other dishonesty or violence;
- (b) contravened any provision under any enactment appearing designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;
- (c) been delinquent in meeting payment obligations;
- (d) engaged in any business practices appearing to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit his method of conducting business;
- (e) an employment record which leads the Commission to believe that the person carried out an Ordinance of impropriety in the handling of his employer's business;
- (f) engaged in, or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.



### SCHEDULE 3

*(Sections 65(2), 76(1)(b), 186(1)(b))*

#### TECHNICAL SOLVENCY TEST FOR CREDIT UNIONS

Line item

**ADJUSTED ASSETS:**

Total assets

Add: Provisions for loan losses

Add: Provisions for investment quality - Total adjusted assets (A)

**ADJUSTED LIABILITIES:**

Total liabilities including contingent liabilities and withdrawable shares

Add: 50% of total delinquent loans

Less: Members withdrawable shares and deposits - Total adjusted liabilities (B)

**- NET VALUE OF ASSETS (A-B)**

Solvency = (Net Value of Assets / Total Members Deposits + Withdrawable Shares) x 10

## SCHEDULE 4

*(Sections 207(1), 208, 209, 215(1))*

### OFFENCES IN RESPECT OF WHICH CRIMINAL LIABILITY ON SUMMARY CONVICTION MAY BE DISCHARGED BY PAYMENT OF AN ADMINISTRATIVE FINE

SECTION OF THE ORDINANCE AND GENERAL DESCRIPTION OF OFFENCE	CRIMINAL PENALTY (CREDIT UNION OR ENTITY)	CRIMINAL PENALTY (PERSON)	ADMINISTRATIVE FINE (CREDIT UNION OR ENTITY)	ADMINISTRATIVE FINE (PERSON)
<b>20</b> Failure to display the licence at its registered office and branch(es)	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>25</b> Failure of a credit union to give prior notice to the Commission when establishing, acquiring, relocating, opening or closing a branch	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>55(2)</b> Failure of a credit union to comply with liquidity requirements	\$5,000		\$1,000	
<b>58(1)</b> Failure of a credit union to invest the funds of the credit union in accordance with the Ordinance	\$2,000		\$500	
<b>58(2)</b> Failure of the board of a credit union to approve written policies for the investment of the credit union's funds	\$5,000		\$1,000	
<b>58(5)</b> Beneficially holding real estate or any interest in real estate acquired by the credit union in the course of satisfaction of debts due for longer than two years or any other time specified by the Commission	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>61(4)</b> Failure to provide access to officers of the Commission	\$2,000	\$2,000	\$500	\$500
<b>62(1), (2)(a), (b)</b> Failure of a person to supply, produce or verify information or documents within the time- frame specified by the Commission.	\$2,000	\$2,000	\$500	\$500
<b>74</b> Failure of a credit union to submit statement of returns to the Commission	\$5,000 plus \$1,000 per day that the offence continues		\$500 per day that the offence continues	

<b>SECTION OF THE ORDINANCE AND GENERAL DESCRIPTION OF OFFENCE</b>	<b>CRIMINAL PENALTY (CREDIT UNION OR ENTITY)</b>	<b>CRIMINAL PENALTY (PERSON)</b>	<b>ADMINISTRATIVE FINE (CREDIT UNION OR ENTITY)</b>	<b>ADMINISTRATIVE FINE (PERSON)</b>
<b>75(1)</b> Failure of a credit union to submit audited financial statements within the time prescribed	\$5,000 plus \$1,000 per day that the offence continues		\$500 per day that the offence continues	
<b>75(2)</b> Failure of a credit union to submit audited financial statements signed by the designated persons	\$5,000 plus \$1,000 per day that the offence continues		\$500 per day that the offence continues	
<b>89(2)</b> Failure of a credit union to provide the Commission with information for statistical purposes	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>100(2)</b> Failure of a credit union to apply the 1/5 limit to individual member shareholdings	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>101</b> Failure of a credit union to adhere to prohibitions against receiving deposits from non-members	\$5,000		\$1,000	
<b>105</b> Failure of the credit union to comply with the restrictions on the payment of dividends as set out in this section	\$5,000		\$1,000	
<b>106</b> Failure of a credit union to make loans in accordance with the conditions outlined in the Ordinance	\$5,000		\$1,000	
<b>118</b> Failure of a credit union to exclude interest payable on delinquent loans from income	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>119</b> Credit union incurring a credit exposure by any member, entity or related party an aggregate amount that exceeds 25% per cent of its capital base except as provided for by this section and Regulations	\$5,000 plus \$1,000 per day that the offence continues		\$1,000	
<b>120(3)</b> Failure of a credit union to take action as required by the Commission regarding credit exposures to related parties which are in excess of the fixed limits, and of the measures that shall be taken to reduce the credit exposures that are in excess of the fixed limits	\$2,000 plus \$500 per day that the offence continues		\$500	
<b>121</b> Failure of a credit union to borrow within the limits set by this Ordinance	\$2,000 plus \$500 per day that the offence continues		\$500	

<b>SECTION OF THE ORDINANCE AND GENERAL DESCRIPTION OF OFFENCE</b>	<b>CRIMINAL PENALTY (CREDIT UNION OR ENTITY)</b>	<b>CRIMINAL PENALTY (PERSON)</b>	<b>ADMINISTRATIVE FINE (CREDIT UNION OR ENTITY)</b>	<b>ADMINISTRATIVE FINE (PERSON)</b>
<b>122(2)</b> Acquisition by a credit union of real property or any interest in real property except as set out in this section	\$5,000		\$1,000	
<b>123</b> Failure to comply with the stipulations for board membership	\$2,000 plus \$500 per day that the offence continues		\$500	
<b>123(5)</b> Failure of a person nominated for membership on a board to declare membership on the board of any other credit union		\$2,000 plus \$500 per day that the offence continues		\$500
<b>125</b> Failure of a credit union to notify the Commission of any change in the membership of the board or officers of a credit union within fourteen days of the change	\$1,000 and \$250 per day that the offence continues		\$500 (small and micro) per day that the offence continues	
<b>128(2)</b> Failure of the board to prepare an annual declaration to the Commission	\$2,000 and \$500 per day that the offence continues		\$500 per day that the offence continues	
<b>128(3)</b> Failure of the chairman of a credit union to submit the annual declaration to the Commission within the time prescribed	\$2,000 and \$500 per day that the offence continues		\$500 per day that the offence continues (president	
<b>128(4)(a) and (b)</b> Failure of the board of a credit union to carry out duties under the Ordinance	\$5,000		\$1,000	
<b>146</b> Failure of the board of a credit union to comply with the requirements for the formation and establishment of additional committees	\$5,000 plus \$1,000 per day that the offence continues			
<b>149</b> Failure of a member of the board, officer or employee to declare conflict of interest and/or recuse himself		\$1,500		
<b>152</b> Failure of a credit union to advise the Commission of reasons for replacing the external auditor	\$5,000		\$1,000	
<b>153</b> Failure of the board of a credit union to submit a copy of the external auditor's financial management letter within the time specified	\$5,000 plus \$1,000 per day that the offence continues		\$500 per day that the offence continues (individual)	

SECTION OF THE ORDINANCE AND GENERAL DESCRIPTION OF OFFENCE	CRIMINAL PENALTY (CREDIT UNION OR ENTITY)	CRIMINAL PENALTY (PERSON)	ADMINISTRATIVE FINE (CREDIT UNION OR ENTITY)	ADMINISTRATIVE FINE (PERSON)
<b>155(2)</b> Failure of a credit union to notify its external auditor of Commission's request to comply with other reporting requirements	\$2,000 and \$500 per day that the offence continues		\$500	
<b>188</b> Failure of a credit union to publish notice of the passing of a resolution for voluntary winding up and to give notice to its members	\$2,000 plus \$500 per day that the offence continues			

## SCHEDULE 5

(Section 77, 128(5))

### CORRECTIVE ACTION BY COMMISSION

In pursuance of section 77, the Commission may take the following forms of corrective action:

- (a) issue directions to a credit union, officer, employee or agent of a credit union;
- (b) issue compliance directions;
- (c) direct a credit union to engage an independent accountant to perform or conduct a review of its financial statements and accounting records;
- (d) disclose information pertaining to a credit union in the *Gazette* and at least two newspapers in national circulation or by electronic or any other appropriate means;
- (e) require the credit union to provide information;
- (f) inquire into and examine the affairs of a credit union or affiliate;
- (g) revoke the licence of a credit union;
- (h) restrict the licence of a credit union;
- (i) vary the restriction on the licence of a credit union;
- (j) disqualify a person from being a member of the board of a credit union;
- (k) require the credit union to remedy any breach of prudential criteria as prescribed in the Regulations;
- (l) require a board of a credit union to take action to comply with a direction;
- (m) apply to the Supreme Court for—
  - (i) an order to require a person to comply with a direction, restriction or measure imposed;
  - (ii) a restraining order or other injunctive or equitable relief or any other remedy which may be provided by law; or
  - (iii) an order for judicial management;
- (n) suspend the operations of a credit union;
- (o) refuse to grant approval for a licence for reconstruction of a credit union;
- (p) issue an order to wind-up a credit union;
- (q) petition the Supreme Court for the winding up of a credit union;
- (r) issue a notice offering a person the opportunity to discharge any liability to conviction in respect of an offence by payment of an administrative fine; or
- (s) take any other corrective and remedial action and decision that the Commission considers appropriate to ensure compliance with the Ordinance.

## SCHEDULE 6

*(Sections 2, 28(1)(g))*

### PRUDENT OPERATIONS AND CONDUCT FOR CREDIT UNIONS

#### **1. Good Governance**

The board of a credit union and senior management must adopt the following practices for prudent operation and conduct—

- (a)* Strategic Planning: considering, approving and monitoring strategic business plans for the credit union;
- (b)* Risk Management: identifying and evaluating the risks involved in a credit union's business operations;
- (c)* Accountability: establishing the responsibilities and accountabilities of the board and board committees;
- (d)* Annual review of policies: reviewing and approving all policies that govern the operations of the credit union;
- (e)* Meetings: holding regular meetings of the board of the credit union and documenting the minutes of all meetings in a manner that captures the decision-making process of the board of the credit union. Minutes should be completed in a timely manner and confirmed;
- (f)* Information Technology Systems Integrity: ensuring the business operations are functioning properly and effectively and under a sound framework of internal controls;
- (g)* Avoidance of self-dealing: establishing controls to ensure that there are no instances of self-dealing;
- (h)* Assessment of effectiveness: reviewing the effectiveness of the board's performance on a regular basis;
- (i)* Regulatory Compliance: establishing a compliance function and system to ensure compliance with all applicable laws and regulations; and
- (j)* Verification for accuracy: establishing controls to verify and ensure the accuracy of all statements, reports, declarations or other returns that are required under the Ordinance.

#### **2. Training and Development programmes**

Annual training programmes shall be made available to all new and existing officers and members of the board of a credit union to cover at least three or more of the following disciplines—

- (a)* credit risk management;
- (b)* investment management;
- (c)* standards of corporate governance;
- (d)* key provisions of the Ordinance and Regulations which govern the sector;
- (e)* financial accounting;
- (f)* business of the credit union; and

(g) interpretation of financial statements.

### **3. Maintenance of Credit Unions**

(1) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of control of its business and records.

(2) Records and systems shall not be regarded as adequate unless they are such as to enable the credit union to meet the prudential criteria and the credit union shall comply with the duties imposed on it by, or under this Ordinance.

(3) Financial records of the credit union are to be kept in such a manner that facilitates timely regulatory reporting, fair and accurate reporting of the financial position of the credit union to management and the board of the credit union and facilitates the timely preparation of audit schedules and worksheets required for the audit by the external auditors.

### **4. Internal Controls**

A sound internal control environment which seeks to maintain the reliability and integrity of the financial and operational information and prevent and detect errors and fraud should include the following elements—

- (a) segregation of duties;
- (b) approval authorities; and
- (c) regular valuation of assets.

### **5. Technology Risk**

Credit unions shall—

- (a) adapt the credit union's technology to its business strategy, business plans and operating needs;
- (b) properly authorise, test and document technology changes before implementing them;
- (c) implement effective security systems and processes to protect sensitive and private member information and prevent the unlawful use of this information;
- (d) implement effective back-up processes, recovery processes and standby arrangements to address technology interruption, destruction or failure;
- (e) allocate appropriate resources (money, people and training) to maintain and enhance the technology; and
- (f) implement effective security systems and processes to protect the information that the technology records, processes, reports and stores.

### **6. Operating Efficiency**

Credit unions should limit their operating costs to 5% of their average assets.



**SCHEDULE 7**

FEEES FOR CREDIT UNIONS

*(Sections (12(a), 14(2), 16(2))*

<b>Description</b>	<b>Amount</b>
Non-refundable application fee	\$2,000
Initial licence fee	\$5,000
Annual licence fee	\$5,000
Establishment of branch	\$2,000

**PASSED** by the House of Assembly this 26<sup>th</sup> day July of 2016.

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**Tracey Parker**  
Clerk to the House of Assembly

.....  
**Josephine Connolly**  
Speaker (Ag.)