



MONTSERRAT

CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT and Subsidiary Legislation

Revised Edition

showing the law as at 1 January 2019

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

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CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT

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CHAPTER 11.21

CO-OPERATIVE SOCIETIES ACT

(Acts 4 of 2011, 9 of 2011 and 9 of 2014)

AN ACT TO MAKE NEW PROVISION WITH RESPECT TO THE REGISTRATION, SUPERVISION, GOVERNANCE, OPERATION AND MANAGEMENT OF CO-OPERATIVE SOCIETIES INCLUDING CREDIT UNIONS, THE MEMBERS OF WHICH HAVE A COMMON BOND OF PHILOSOPHY AND SOCIO-ECONOMIC OBJECTIVES, AND FOR INCIDENTAL AND RELATED PURPOSES.

Commencement

[1 July 2011]

PART 1

PRELIMINARY

Short title

1. This Act may be cited as Co-operative Societies Act.

Interpretation

2. (1) In this Act—

“**agent**” in relation to a co-operative society, includes its bankers, accountants, solicitors or barristers, auditors and its financial and other advisers;

“**amendment**”, in relation to by-laws, includes the making of a new by-law and the alternation, substitution or revocation of a by-law;

“**apex body**” means a body established under section 221;

“**associate**” means—

- (a) an immediate relative of a person including a spouse, a child, a spouse of a child, a parent, brother or sister;
- (b) a co-operative society which holds 20% or more of a co-operative society’s shares in accordance with section 100;
- (c) a company or co-operative society in which the co-operative society holds 20% or more of shares to which voting rights are attached;
- (d) a member of the Board or committee, an employee or a business partner of a co-operative society;

(e) a company or co-operative society over which a co-operative society has control; or

(f) a company or co-operative society of which any of the persons referred to in paragraph (c) is a director, manager or has control,

notwithstanding that at the relevant time any of the persons in question, not being individuals, have not yet come into existence or have ceased to exist;

“Board” means the Board of directors constituted in accordance with section 53, to whom the management of the affairs of a co-operative society is entrusted;

“bonus” means a share of the profits of a co-operative society divided among its members in proportion to the volume of business done with the co-operative society by them from which the profits of the co-operative society were derived;

“by-laws” means the by-laws of a co-operative society made and filed under sections 51 and 52, respectively, and includes a registered amendment of the by-laws;

“capital base” means—

(a) paid up capital being qualifying and equity shares paid up in cash and invested as risk capital by the members and forming a permanent part of the capital of the co-operative society and which are redeemable only upon transfer to another member; and

(b) institutional capital,

less any amount by which that total has become impaired by operating or other losses;

“CARICOM Member” means a Member of the Caribbean Community established by the Revised Treaty of Chaguaramas signed at Nassau, The Bahamas on 5 July 2001;

“central co-operative society” means a co-operative society whose membership comprises co-operative societies providing technical and other services;

“central credit union” means a credit union whose membership comprises principally other credit unions and generally provides liquidity services, deposit facilities and investment opportunities to members;

“child” includes an offspring, stepchild and adopted child as defined in the Children (Care and Adoption) Act, Cap. 5:04;

“committee” means a committee established under section 57, 59 or 65;

“consumers’ co-operative society” means a co-operative society whose primary purpose is to purchase, procure, process, manufacture, exchange, hire or deal in goods or services for sale at retail to its

members who are to be the ultimate users or consumers of those goods and services;

“co-operative society” means a self-help, collectively owned and democratically controlled business enterprise registered under this Act, which consists of a group of people that provide a socially desirable and economically beneficial service to its participating members on a joint action and not-for-profit basis;

“credit union” means a co-operative society organised by a group of people with a shared field of membership for provident and productive purposes and providing cooperatively pooled financial services to its members, including savings and lending business;

“delinquent loan” means a loan for which a borrower has defaulted on the agreed terms of repayment;

“deposit” means a sum of money paid on terms—

- (a) that the sum will be repaid, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property or services or to the giving of security,

and for the purposes of this definition, money is paid on terms which are referable to the provision of property or services or the giving of security if—

- (i) it is paid by way of advance or part payment for the sale, hire or other provision of property or services of any kind and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided;
- (ii) it is paid by way of security for payment for the provision of property or services of any kind provided or to be provided by the person by whom or on whose behalf the money is accepted; or
- (iii) it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

“deposit guarantee” means an insurance policy or fund that guarantees the return of funds in a credit union against loss in the event that the institution fails;

“director” means a member of the Board who is elected in accordance with section 72;

“dividend” means a share of the surplus of a co-operative society divided among its members in proportion to the share capital held by them;

“doubtful loan” means a loan that is twelve or more months in default;

“equity shares” constitutes the common stock or risk capital in addition to qualifying shares purchased by individual and institutional members as their ownership stake in the safety, soundness and competitiveness of a co-operative society;

“financial institution” has the meaning assigned in section 2 of the Financial Services Commission Act;

“Financial Services Commission” means the Financial Services Commission established pursuant to the Financial Services Commission Act;

“fit and proper person”, in relation to a director, officer or member of a committee, means a person who –

- (a) possesses the skill and experience to adequately perform a relevant role;
- (b) possesses the probity, soundness of judgement and competence to fulfil the responsibilities of the position;
- (c) is likely to be diligent about fulfilling the responsibilities of the position;
- (d) is not likely to adversely affect or threaten the interest of members by holding the position;
- (e) has a reputation for personal integrity; and
- (f) has not engaged in any conduct or business activity which suggest an imprudent, deceitful or otherwise improper method of conducting business;

“guidelines” means the guidelines issued under section 8;

“housing charges” means the fee charged by a housing co-operative society to its members to cover the costs of providing housing accommodation;

“housing co-operative society” is a co-operative society that owns real estate and where each shareholder in the society is granted the right to occupy one housing unit;

“housing unit” means housing accommodation intended for individual or family use;

“industrial co-operative society” means a co-operative society whose primary purpose is to operate an enterprise in which its members are the workers necessary for the operation;

“institutional capital” means the aggregate of a co-operative society’s—

- (a) statutory or other non-distributable general reserves;
- (b) earnings retained after distribution of surplus; and

- (c) such other funds which may be received by way of non-refundable donations for no specified purpose which are not available for distribution;
- “legal representative”**, in relation to a co-operative society, member or other person means a person who stands in place of and represents the co-operative society, member or other person and includes a trustee, executor, administrator, assignee, or receiver of the co-operative society, member or other person;
- “member”** includes a person or co-operative society joining in the application for the registration of a co-operative society, and a person or co-operative society admitted to membership after registration in accordance with this Act and the by-laws;
- “Minister”** means the Minister with responsibility for co-operative societies;
- “minor”** means an individual under the age of fourteen years;
- “officer”** includes a president, vice president, secretary, treasurer, director or other person empowered under this Act or the Regulations or by-laws to give directions in regard to the business of a co-operative society;
- “PEARLS”** means the International Prudential and Operating Standards and Monitoring System as produced and approved by the World Council of Credit Unions in respect of protection, effective financial structure, asset quality, rates of return and costs, liquidity and signs of growth;
- “prescribed”** means prescribed in the Regulations;
- “primary co-operative society”** means a co-operative society that is owned by individual members;
- “qualifying shares”** means the mandatory, non-withdrawable minimum shares to be purchased by an approved applicant to be admitted and to enjoy the full rights and privileges of becoming a member of a co-operative society;
- “Register”** means—
- (a) in the case of credit unions, the Register of Credit Unions to be kept under section 6(b); and
 - (b) in the case of co-operative societies other than credit unions, the Register of Co-operative Societies to be kept under section 6(a);
- “Regulations”** means the Regulations made pursuant to section 246;
- “secondary co-operative society”** means a co-operative society that is owned by an association of primary co-operative societies;
- “security”** when issued by a co-operative society—

(a) means a share or a debt obligation of a co-operative society;
and

(b) includes a certificate confirming the share or debt obligation;

“security interest” means an interest in or charge on the property of a co-operative society by way of a mortgage, charge, hypothec pledge or other obligation taken by a creditor to secure payment of a debt of the co-operative society;

“special resolution” means a resolution—

(a) passed by a majority of at least three-fourths of the members of a co-operative society who voted at a general meeting with respect to that resolution and for which at least ten days’ notice has been given specifying the intention to propose the resolution as a special resolution; or

(b) for which at least ten days’ notice of the intention to propose the resolution has been given and that is approved by written affirmative vote of at least three-fourths of the members of the co-operative society who—

(i) voted on that resolution within the prescribed time and in the prescribed manner; or

(ii) cast a written vote in the manner and within the time specified in the notice; or

(c) consented to, in writing by all of the members of the co-operative society who are entitled to vote at a general meeting on that resolution;

“stabilisation fund” means a facility to provide technical assistance, advice and limited financial assistance to credit unions that are experiencing solvency problems or are insolvent; and

“statutory reserves” means the reserves established under section 125;

“tertiary co-operative society” means a co-operative society that is owned by an association of secondary co-operative societies;

“Tribunal” means the Co-operative Societies Appeals Tribunal established under section 195;

(2) In this Act—

(a) a reference to the **“Registrar”** shall, in relation to a credit union, be construed as a reference to the Financial Services Commission; and

(b) a reference to the **“Registrar”** shall, in relation to a co-operative society other than a credit union, be construed as a reference to the Registrar of Co-operatives appointed under section 5(1).

Co-operative principles

3. (1) For the purposes of this Act, a co-operative society conforms to co-operative principles if—

- (a) each member, other than in a secondary or tertiary co-operative society, has no more than one vote;
- (b) no member is entitled to vote by proxy;
- (c) its membership is open, voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
- (d) its business is carried on primarily as an economic activity for the benefit of its members;
- (e) its primary concerns are its institutional capacity and financial strength, including adequate reserves, retained earnings and internal systems designed to ensure continuous growth and service to members;
- (f) it utilises any surplus or savings arising out of its operations—
 - (i) to strengthen its business;
 - (ii) to provide or improve common services to its members;
 - (iii) for the payment of dividends;
 - (iv) to issue bonuses;
 - (v) to educate its members, employees, directors, committee members and the general public in the principles and techniques of economic and democratic cooperation; or
 - (vi) for non-profit, charitable, benevolent or cultural purposes;
- (g) it pursues co-operation with other co-operative societies;
- (h) it provides for continuing education and training; and
- (i) it contributes to the social and economic development of its community.

(2) A co-operative society shall conform to the co-operative principles set out in subsection (1).

PART 2

REGISTRATION OF CO-OPERATIVE SOCIETIES

Requirement for registration

4. (1) A person shall not carry on the business of a co-operative society unless it is registered in accordance with this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$100,000 or to imprisonment for a term of three years.

Registrar

5. (1) Subject to subsection (2), there shall be a Registrar of Co-operative Societies who shall be a public officer and whose duty shall be to regulate co-operative societies. (*Amended by Act 9 of 2011*)

(2) For the purposes of regulating credit unions, the Registrar shall be the Financial Services Commission.

(3) The Registrar shall be assisted by professional and administrative staff, and may delegate duties to any other person or agent under his control as is necessary to enable the Registrar to perform his regulatory duties and to exercise the powers conferred on the Registrar under this Act.

(4) The Registrar shall—

- (a) register all viable co-operative societies;
- (b) inspect and monitor all co-operative societies;
- (c) supervise and regulate all co-operative societies; and
- (d) lead and manage the regulatory process.

Register

6. The Registrar shall—

- (a) in the case of co-operative societies, other than credit unions, keep and maintain a register to be known as the “**Register of Co-operative Societies**” in which shall be recorded the details of all co-operative societies registered under this Part; and
- (b) in the case of credit unions, keep and maintain a register to be known as the “**Register of Credit Unions**” in which shall be recorded the details of all credit unions registered under this Part.

Registrar's regulatory powers

7. (1) If—

- (a) after an examination of a co-operative society or on the receipt of any information, the Registrar is of the opinion that the funds of the co-operative society are not being properly managed or protected; or
- (b) the Registrar has reason to believe that a co-operative society is likely to take any action that would affect the financial soundness of the co-operative society,

the Registrar may—

- (i) by notice in writing, direct the Board within such period as the Registrar may specify, to cease such action or such practice as the Registrar may specify or to take such measures as the Registrar considers necessary to protect the funds of the co-operative society or the interests of the co-operative society's members; and
- (ii) place a co-operative society under administrative supervision and appoint a person who in the Registrar's opinion, has the necessary experience and training to supervise or advise the co-operative society on the action to be taken to remedy the situation.

(2) A person appointed under subsection (1)(b)(ii) shall hold office for a period not exceeding twelve months and on such terms as the Registrar shall specify.

(3) A person appointed under subsection (1)(b)(ii) may be paid such remuneration as the Registrar may determine, and the remuneration, and any other expenses of and incidental to the appointment, shall be defrayed out of the funds of the co-operative society.

(4) Notwithstanding sections 23 and 226, if it appears to the Registrar that a requirement in this Act, the Regulations or the by-laws is being contravened, but the circumstances are not such as to justify the taking of action under section 226 or the suspension of registration under section 23, the Registrar may give such directives to the co-operative society or person, as seems appropriate.

(5) A director, committee member, employee or agent of a co-operative society shall at all times give all information required by a person appointed under subsection (1)(b)(ii), for the full and satisfactory performance of his duties; and for this purpose section 186 shall apply as if any reference therein to the Registrar included a reference to a person appointed under subsection (1)(b)(ii).

(6) A person appointed under subsection (1)(b)(ii) shall report to the Registrar, in such manner and with such frequency as the Registrar may direct, on the affairs of the co-operative society.

(7) A co-operative society or a person that is required to take any action under this section, may within twenty one days of the service of the notice by the Registrar, make representation in writing to the Registrar as to why the action required should not be taken.

(8) If the co-operative society fails to comply with the notice referred to in subsection (1)(b)(i), after giving the Board the opportunity to be heard in a general meeting called by the Registrar for the purpose, the Registrar may—

- (i) remove from office; or
- (ii) suspend from office for such period as the Registrar considers appropriate,

all or any of the directors of the co-operative society and direct that the co-operative society be managed by such persons as he may appoint for a period not exceeding fifteen months.

(9) If a director is suspended under this section, the remaining directors shall be regarded as constituting the Board.

(10) If all the directors are removed under this section, persons appointed under this section shall exercise all the powers and perform all the functions of a duly constituted Board and shall 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 co-operative society.

Power to issue guidelines

8. (1) The Registrar may, after consultation with co-operative societies, issue guidelines in respect of—

- (a) prudential standards to be observed by co-operative societies to ensure the safety and soundness of the funds of co-operative societies;
- (b) the management and investment of the funds of co-operative societies;
- (c) the calculation and management of doubtful and delinquent loans;
- (d) self insurance arrangements; and
- (e) anti-money laundering and combating the financing of terrorism.

(2) The guidelines issued under subsection (1) for credit unions shall be consistent with PEARLS.

(3) If the Registrar intends to make any substantive modification to the guidelines, the Registrar shall consult with co-operative societies.

(4) The Registrar shall—

- (a) make the guidelines and all amendments to the guidelines available for inspection by the public; and
 - (b) on payment of any prescribed fee, provide copies of the guidelines and all amendments thereto to a member of the public.
- (5) The Registrar shall, at such intervals as the Registrar determines, review any guidelines for the time being in force.
- (6) The Registrar shall publish the guidelines issued under this section and any amendment to the guidelines in the *Gazette*.

Certificate of Registrar

9. (1) The Registrar may issue a person with a certificate stating that—
- (a) a document required to be sent to the Registrar has or has not been received by the Registrar;
 - (b) a name, whether that of a co-operative society or not, is or is not on the Register; or
 - (c) a name, whether that of a co-operative society or not, was or was not on the Register on a stated date.
- (2) An officer authorised by the Registrar may sign a certificate issued under this section.
- (3) The signature required under subsection (2) may be printed or mechanically reproduced on the certificate.
- (4) A certificate referred to in subsection (2) is admissible in evidence as conclusive proof of the facts stated in the certificate without proof of the office or signature of the person purporting to have signed the certificate.

Power to refuse documents

10. (1) The Registrar may refuse to receive, file or register any document that in his opinion—
- (a) contains any matter contrary to law;
 - (b) has not, by reason of any omission or error in description, been properly completed;
 - (c) does not comply with the requirements of this Act;
 - (d) contains any error, alteration or erasure;
 - (e) is not legible; or
 - (f) is damaged.
- (2) The Registrar may request in respect of a document refused under subsection (1)—

- (a) that it be amended or completed and resubmitted; or
- (b) that a new document be submitted in its place.

Verification of documents

11. The Registrar may require that a document or information contained in a document required by this Act or the Regulations be sent to the Registrar to be verified by affidavit or otherwise.

Application for registration

12. (1) Subject to subsection (2), an application for registration of a co-operative society under this Part shall be submitted to the Registrar in the prescribed form and in such manner as the Registrar may determine.

- (2) An application under subsection (1) shall be signed—
 - (a) in the case of a co-operative society of which no member is registered as a co-operative society, by at least one-third of the total membership of the co-operative society;
 - (b) in the case of a co-operative society where some members are registered as co-operative societies, by at least three-quarters of the total membership of the co-operative society; and
 - (c) in the case of a co-operative society, where all the members are registered as co-operative societies, on behalf of at least two such co-operative societies.
- (3) An application under subsection (1) shall be accompanied by—
 - (a) three copies of the proposed by-laws of the co-operative society;
 - (b) the prescribed application fee; and
 - (c) such other information in respect of the co-operative society as the Registrar may require.

Content of and amendment to by-laws

13. (1) A co-operative society shall include in its by-laws provisions with respect to—

- (a) its objects, core business and conditions of membership, including—
 - (i) the rights of joint members, if any;
 - (ii) the qualification for membership, the withdrawal of members and the transfer of membership;
 - (iii) the amount of the membership fee and the annual subscription, if any, to be paid by members;

- (iv) the conditions on which membership ceases or may be terminated, the disposition that may be made on cessation or termination of a member's interest and the determination of the value of the member's interest; and
- (v) the minimum value of equity shares that may be held by each member;
- (b) voting rights and the rights of making, amending and repealing by-laws, the right of a member to vote by ballot and the manner, form and effect of votes at meetings;
- (c) the quorum for meetings;
- (d) directors, officers and members of the committees of directors, in relation to—
 - (i) their qualifications, terms of office and removal;
 - (ii) the filling of vacancies;
 - (iii) their powers and duties; and
 - (iv) the requirement for them to be fit and proper persons;
- (e) the address of the co-operative society;
- (f) the distribution of the property of the co-operative society on dissolution;
- (g) the borrowing powers of the co-operative society and the procedure for exercising those powers; and
- (h) any matters, in addition to those set out in paragraphs (a) to (g) that the members may consider necessary or desirable.

(2) Subject to subsection (3), if the by-laws require a greater number of votes of directors or members than that required by this Act to effect any action, the by-laws shall prevail.

(3) The by-laws may not require a greater number of votes of members to remove a director than the number required for a special resolution.

(4) Subject to this Act and the by-laws, the members of a co-operative society may, at an annual general meeting or a special meeting, amend the by-laws by special resolution if notice of the proposed amendment together with notice of the meeting—

- (a) by sending the notice by mail to the members, at the addresses given in the register of members; or
- (b) by publishing the notice in not less than two issues of a newspaper published and circulated in Montserrat, or by posting the notice in a place or through a medium of communication that, as stipulated in the by-laws and in the

opinion of the Board, is prominent and accessible to members.

(5) An amendment to the by-laws shall be submitted by the co-operative society to the Registrar for registration in accordance with subsection (6) and no amendment shall be valid until it has been registered.

(6) An application to register an amendment of the by-laws shall be accompanied by three copies of the amendment certified to be true copies by the secretary and president of the co-operative society together with a copy of the resolution.

(7) On being satisfied that an amendment of the by-laws is not contrary to this Act, Regulations or guidelines, the Registrar shall register the amendment.

(8) On registration of an amendment of the by-laws of a co-operative society, the Registrar shall send to the co-operative society a certified copy of the amendment, which shall be conclusive evidence of the fact that the amendment has been duly registered.

(9) If the Registrar refuses to register an amendment—

- (a) the Registrar shall notify the co-operative society in writing of the refusal, the reasons for the refusal and of the co-operative society's right to appeal under paragraph (b); and
- (b) the co-operative society may, within twenty one days of the notice of refusal, appeal to the Tribunal.

Effect of by-laws

14. The by-laws of a co-operative society when registered bind the co-operative society and its members to the same extent as if they—

- (a) had been signed and sealed by the co-operative society and by every member; and
- (b) contained covenants on the part of each member and the legal representative of each member to observe the by-laws.

Conditions for registration

15. (1) A co-operative society shall not be registered, or having been registered, shall not continue to be registered under this Part—

- (a) unless its membership consists—
 - (i) in the case of a credit union, of not less than one hundred members;
 - (ii) in the case of any other co-operative society, of not less than twenty members;

- (b) unless it is economically viable and has provision for equity capital expansion and continuous business growth;
- (c) unless there is conformity among its membership with all the co-operative principles as set out in section 3;
- (d) unless the word “**Co-operative**” or “**Credit Union**” as the case may be forms part of the name of the co-operative society, and, in the case of a co-operative society registrable under subsection (2), the words “**Junior Cooperative**” form part of the name of the co-operative society;
- (e) in the case of a co-operative society to be registered with limited liability,—
 - (i) unless the word “**Limited**” is the last word of the name of the co-operative society; and
 - (ii) in the case of a primary co-operative society, unless each member of the primary co-operative society is a shareholder and has one vote in the democratic proceedings of the co-operative society;
- (f) if the name of the co-operative society is identical to that of another co-operative society or so nearly resembles the name of another co-operative society as to be likely to mislead the members of the public as to its identity;
- (g) unless it has and maintains an address in Montserrat to which all notices and communications may be sent;
- (h) unless its by-laws conform to this Act;
- (i) unless it complies with the guidelines issued under section 8;
- (j) unless its policies in respect of shares, loans, deposits and investments are documented and comply with this Act; and
- (k) unless, within thirty days after the issue of the certificate of registration, the co-operative society paints or affixes its registered name in letters that are easily legible in a conspicuous position on the outside of the place where the business of the co-operative society is carried on;
- (l) unless it has commenced business within ninety days of its registration under this Act; or
- (m) unless it complies with the law in force in Montserrat relating to anti-money laundering, proceeds of crime and anti-terrorism.

(2) The Registrar may register as a junior co-operative a co-operative society whose membership consists solely of members of a school, club or cultural organisation who are under the age of fourteen years.

(3) In the determination of the viability of an applicant or existing co-operative society the Registrar may have regard to—

- (a) the demand for the proposed or current services;
- (b) the capital base of the co-operative society;
- (c) the co-operative society's membership and business size, growth and growth potential; and
- (d) the capacity of the co-operative society to sustain management and audit costs.

(4) A registered cooperative society shall implement suitable measures, procedures and policies to counter money laundering and to combat the financing of terrorism.

(5) Notwithstanding the generality of subsection (4), every registered cooperative society shall, in addition to complying with the provisions of this Act and Regulations made under this Act, also comply with the following—

- (a) any relevant provision of the Proceeds of Crime Act, the Anti-money Laundering and Terrorist Financing Regulations and the Anti-money Laundering and Terrorist Financing Code made under the Proceeds of Crime Act;
- (b) any relevant provisions of the Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 (U.K.);
- (c) any relevant provision of the Financial Services Commission Act; and
- (d) any other relevant financial services legislation promoting good governance, financial accountability and made to safeguard against money laundering and financing of terrorist activity.

Registration of co-operative societies

16. (1) If the Registrar is satisfied that an application has been made in accordance with this Act, the Registrar shall, within three months of the receipt of the application, register the co-operative society and its by-laws and issue the co-operative society with a certificate of registration in the prescribed form.

(2) The name under which a co-operative society is registered under this Act shall be published in the *Gazette* and shall be noted in the Register.

(3) If the Registrar refuses to register a co-operative society, the Registrar shall give the applicant reasons in writing for the refusal.

Effect of certificate of registration

17. (1) Except for a co-operative society that is to be taken to be registered under section 249, a co-operative society comes into existence on the date shown in its certificate of registration.

(2) A certificate of registration issued by the Registrar to a co-operative society is conclusive proof that the co-operative society named in the certificate is registered under this Act and has complied with all the requirements of registration under this Act.

Capacity as body corporate

18. The registration of a co-operative society renders it a body corporate and, subject to this Act and its by-laws, it shall have the capacity, rights, powers and privileges of a body corporate.

Prohibition on carrying on business contrary to by-laws and law

19. A co-operative society shall not—

- (a)* carry on a business or exercise a power that is restricted or prohibited by its by-laws or by any law in force in Montserrat; or
- (b)* exercise any of its powers in a manner contrary to its by-laws.

Registered office

20. (1) A co-operative society shall at all times establish and maintain a registered office and the address of such office shall be specified in the by-laws.

(2) Subject to subsection (3), the directors of a co-operative society may change the address of the registered office.

(3) A co-operative society shall inform the Registrar of an intention to change the address of its registered office at least one month prior to the change being made.

Maintenance of mandatory records

21. (1) A co-operative society shall display its certificate of registration at its registered office at all times.

(2) A co-operative society shall make available at all reasonable times at its registered office—

- (a)* a copy of this Act and the Regulations;
- (b)* a copy of its by-laws;
- (c)* the register of members;
- (d)* the minutes of all meetings and resolutions of its members;

- (e) copies of all notices of directors and notices of change of directors;
- (f) a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the co-operative society with the dates on which each person became or ceased to be a director;
- (g) a copy of every certificate issued to it by the Registrar;
- (h) a copy of every order of the Registrar relating to the co-operative society;
- (i) a copy of the monthly financial statements of the co-operative society;
- (j) a copy of the shares transfer register and investment reports; and
- (k) the minutes of all meetings and resolutions of its directors and committees.

Inspection and access to records

22. (1) The Registrar may, during the normal business hours of a co-operative society, observe practices, monitor operations and inspect or authorise the inspection of a co-operative society, including any of the records listed in section 21(2).

(2) Members of a co-operative society, their agents and their legal representatives may, during the normal business hours of the co-operative society, examine any of the records specified in section 21(2)(a) to (h) and the returns specified in section 147.

Suspension and cancellation of registration

23. (1) The Registrar may by order in writing suspend the registration of a co-operative society for a period not exceeding twelve months if the Registrar is satisfied that—

- (a) the co-operative society is in breach of any condition of registration;
- (b) the co-operative society is in breach of any requirement of section 3 or 15;
- (c) the co-operative society or any officer of the co-operative society has failed or refused to comply with any obligation imposed by, or any requirement of this Act, Regulations made under this Act or its by-laws;
- (d) the Registrar has not received from the co-operative society any return notice or other document or fee required by this Act or the Regulations to be sent to it; or

- (e) the co-operative society has failed to comply with a notice given by the Registrar under section 7(1)(b)(i) or with guidelines issued by the Registrar under section 8.
- (2) The Registrar may by order in writing cancel the registration of a co-operative society if—
- (a) the co-operative society does not commence business within ninety days of its registration under this Act;
 - (b) the number of members has been reduced to less than the number required for the registration of the co-operative society;
 - (c) the registration has been obtained by fraud or mistake; or
 - (d) the co-operative society has not within a period of suspension under subsection (1) rectified the reason for its suspension.
- (3) The Registrar shall by order in writing cancel the registration of a co-operative society if—
- (a) the co-operative society gives notice to the Registrar that it has ceased to carry on business;
 - (b) the co-operative society is dissolved;
 - (c) the co-operative society is amalgamated with one or more other co-operative societies or bodies corporate; or
 - (d) the co-operative society is bankrupt within the meaning of the Bankruptcy Act, (Cap. 3:03).
- (4) A co-operative society which includes among its members one or more registered co-operative societies may not have its registration cancelled under paragraph (a).
- (5) An order under subsections (1), (2) or (3) shall take effect from the date of the order.
- (6) The Registrar shall not make an order under subsections (1), (2) or (3) until the Registrar has given the co-operative society an opportunity to be heard.
- (7) Immediately after the Registrar has suspended or cancelled the registration of a co-operative society the Registrar shall publish a notice of the suspension or cancellation in—
- (a) the *Gazette*;
 - (b) not less than two issues of a newspaper published and circulated in Montserrat; and
 - (c) any other appropriate medium of communication that, in the opinion of the Registrar is prominent and accessible to the public.

(8) If the registration of a co-operative society is cancelled by order under this section or any other section the co-operative society shall, except for the purpose of winding up, cease to exist as a body corporate from the date on which the order takes effect.

Seal

24. (1) The Board may by resolution—

- (a) adopt an official seal;
- (b) change the official seal adopted under paragraph (a); and
- (c) determine which of its directors, officers or agents shall sign instruments to which the official seal is affixed.

(2) An instrument of agreement executed on behalf of a co-operative society by a director, an officer or an agent of the co-operative society is not invalid merely because an official seal is not affixed to it.

Pre-registration contracts

25. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a co-operative society before it comes into existence is personally bound by the contract and is entitled to the benefits and liable for the obligations of the contract.

(2) Within a reasonable time after a co-operative society comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made in its name or on its behalf, before it came into existence.

(3) Subject to subsection (4) and (5), if a co-operative society adopts a contract under subsection (2)—

- (a) the co-operative society is bound by the contract and is entitled to the benefits and liable for the obligations thereof as if the co-operative society had been in existence at the date of the contract and had been a party to it; and
- (b) a person who purported to act in the name of the co-operative society or on its behalf ceases to be bound by or entitled to the benefits and liable for the obligations of the contract.

(4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of a co-operative society is adopted by the co-operative society, a party to the contract may apply to a court for an order fixing the obligations under the contract as joint or joint and several, or apportioning liability between or among the co-operative society and a person who purported to act in the name of the co-operative society or on its behalf; and the court may upon the application make any order it thinks fit.

(5) If expressly so provided in a written contract, a person who purported to act for or on behalf of the co-operative society before it came

into existence shall not be bound by the contract or entitled to the benefits and liable for the obligations of the contract.

PART 3

MEMBERSHIP AND MEETINGS

Application and qualification for, and limitations on, membership

26. (1) An application for membership of a co-operative society shall be submitted to the Board in such form as the Board may approve.

(2) In order to qualify for the membership of a co-operative society, a person, other than a registered co-operative society shall—

- (a)* be a citizen or resident of Montserrat or a citizen of another CARICOM Member;
- (b)* not be an undischarged bankrupt;
- (c)* not be of unsound mind; and
- (d)* except in the case of a junior co-operative, be fourteen years of age or over.

(3) If the co-operative society is a credit union, an individual who is over fourteen years of age but who has not yet attained the age of eighteen years may be admitted as a member and subject to subsection (4) may enjoy all the rights of membership and be subject to all the liabilities of membership.

(4) If a member referred to in subsection (3) is required to execute any instrument or give any receipt, he may only do so by his parent or guardian.

(5) A member of a co-operative society other than a credit union who has not attained the age of eighteen years may not obtain credit from the co-operative society.

(6) The Board shall cause each applicant for membership to be notified in writing that his application has been approved or disapproved.

(7) Subject to subsection (8), a person may be a member of more than one co-operative society if—

- (a)* the person has disclosed in his application for membership of a co-operative society the name of any other co-operative society of which the person is a member; and
- (b)* the co-operative societies both have as a primary object the granting of loans to their members and the person has fully disclosed to the first co-operative society that he has applied for membership of the second co-operative society.

(8) A person who is a member of a credit union shall not apply for membership of another credit union unless his application is accompanied by the written consent of the credit union of which he is already a member to his proposed dual membership.

(9) If a person becomes a member of more than one credit union, the Secretary or Manager of the second or subsequent credit union shall inform the Registrar within fourteen days of the grant of membership.

Joint accounts

27. Subject to the by-laws, if individuals have separate and independent membership in a co-operative society, joint accounts may be held.

Membership fees and membership register

28. (1) A person shall not exercise the rights of membership of a co-operative society unless the person has paid the prescribed membership fee and has satisfied any other requirement which may be specified in the by-laws.

(2) A co-operative society shall keep a register of members in which shall be recorded—

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

Liability of past and present members

29. (1) Subject to this Act, the liability of a current member of a co-operative society is limited to the unpaid amount of his subscription for shares.

(2) The liability of a past member or the estate of a deceased member for debts of a co-operative society as they existed on the date on which the member ceased to be a member or died continues for a period of two years after the cessation of membership or death.

Withdrawal of membership

30. (1) A member of a co-operative society may at any time withdraw from membership of the co-operative society in such a manner as may be prescribed by the by-laws or Regulations.

(2) Withdrawal of membership from a co-operative society shall be by written notice addressed to the Board.

(3) Withdrawal of membership from a co-operative society shall not affect any existing liability of the member to the co-operative society.

Termination of membership by Board

31. (1) Subject to the by-laws, the Board may decide, by a vote of at least two-thirds of the directors present at a meeting called for the purpose, order the termination of membership of a member of a co-operative society.

(2) If the Board terminates the membership of a member under this section—

(a) the Board shall—

- (i) within a period of one year, purchase from the member at par value all shares in the co-operative society held by the member; and
- (ii) pay to the member all amounts held to the member's credit, together with any interest accrued on those amounts and the amount outstanding on loans made to the co-operative society by the member with any interest accrued on those amounts;

(b) the secretary of the co-operative society shall, within ten days from the date on which an order to terminate membership is made, notify the member of the order in writing;

(c) the member may appeal from the order to the next general meeting of the co-operative society by giving written notice of his intention to appeal to the secretary within thirty days from the date the member received notice of the order under paragraph (b); and

(d) the member appeals under paragraph (c), a majority or any greater percentage that may be specified in the by-laws, of the members present at the general meeting shall confirm or rescind the order.

(3) If the address of a member the termination of whose membership is ordered under subsection (1) is unknown to the co-operative society after all reasonable efforts have been made to ascertain the member's address for the purpose of making payment to him in accordance with subsection (2), the co-operative society shall transfer those amounts to its statutory reserves.

(4) If any amounts are transferred under subsection (3), the co-operative society shall pay those amounts to the person entitled to them on proof of the person's claim.

(5) If a co-operative society transfers amounts held to the credit of a member under subsection (3), it shall immediately submit to the Registrar a return showing—

- (a) the member's name;
- (b) the member's last known address; and
- (c) the amounts transferred.

Termination of membership by members

32. Members may terminate the membership of a member if—

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

Suspension of membership

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

Appeal

34. (1) Subject to subsection (2), if a person's membership is terminated under section 31 or 32, or suspended under section 33, the person may appeal against the termination or suspension to the Registrar in the prescribed manner and the Registrar shall confirm or set aside the resolution terminating or suspending the membership.

(2) A person whose membership is terminated for failure to pay fees, assessments, rent or occupancy charges or to fulfil other financial obligations to the co-operative society is not eligible to appeal against the termination of his membership to the Registrar under subsection (1).

(3) If a person appeals against the termination of his membership under section 31(2)(c) or this section, notwithstanding the resolution terminating his membership, the person continues to be a member until the termination of his membership is confirmed by the meeting of members under section 31(2)(d) or by the Registrar under this section.

Re-admittance

35. A person whose membership is terminated under section 31 or 32 may be re-admitted to membership only by a two-thirds majority vote of members present and voting at a general meeting.

Voting rights of a member who is not an individual

36. A co-operative society that is a member of another co-operative society shall exercise its voting rights in that other co-operative society through one of its members duly appointed in that behalf as a delegate under section 49.

Representatives of member who is not an individual

37. (1) If a co-operative society is a member of another co-operative society, the latter co-operative society shall recognise any individual authorised by a resolution of the directors of the former co-operative society to represent it at meetings of the latter co-operative society.

(2) An individual authorised under subsection (1) may exercise, on behalf of the co-operative society, all the powers of that co-operative society as if it were an individual member.

Voting procedure

38. (1) Subject to the by-laws, members shall vote—

- (a)* by a show of hands; or
- (b)* if the majority of the members entitled to vote at a meeting so demands, by secret ballot.

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

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

Place of meetings

39. General meetings of members shall be held in Montserrat or, in the case of co-operative societies of a regional or international nature, within the defined geographical area of the co-operative society's lawful operations—

- (a)* at the place provided in the by-laws; or
- (b)* if the by-laws contain no provision, at the place determined by the Board.

Members not to exercise rights until due payment

40. A member shall not exercise the rights of a member unless the member has made payment to the co-operative society in respect of membership or acquired an interest in the co-operative society as specified in the by-laws of the co-operative society or as prescribed.

First general meeting

41. (1) This section does not apply to a co-operative society if it is taken to be registered under section 249.

(2) Within two months of the date of its registration, a co-operative society shall hold a general meeting for which all members shall be given at least ten days notice and at which all members are entitled to be present and to vote.

(3) Notwithstanding subsection (2), if the Board applies to the Registrar, the Registrar may extend the time for holding the general meeting.

(4) The business at the general meeting referred to in subsection (2) shall include—

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

Annual general meetings

42. (1) A co-operative society shall hold an annual general meeting in each year not later than three months after the end of the previous financial year of the co-operative society.

(2) Notwithstanding subsection (1), if the Registrar receives a written request from the Board of a co-operative society prior to the expiration of the period of three months referred to in subsection (1), the Registrar may authorise the co-operative society to hold the annual general meeting at any date not later than six months after the end of the financial year of the co-operative society that it considers appropriate.

(3) The by-laws may provide for holding semi-annual or other periodic meetings.

Special general meeting

43. (1) The Board may call a special general meeting of the members of a co-operative society at any time.

(2) Subject to subsection (3), the Board shall call a special general meeting of the members on receipt of a written request, specifying the purpose of the meeting, from such number of members as may be specified in the by-laws.

(3) The Board shall call the special general meeting referred to in subsection (2) within twenty days of their receipt of the request and the special meeting shall dispose of the business specified in the request.

(4) The Registrar may call a special general meeting of the co-operative society—

- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the co-operative society's affairs ordered or made by the Registrar; or
- (b) if the co-operative society fails to hold an annual general meeting in accordance with section 42(1) or (2), for the purpose of enabling members to secure any information regarding the affairs of the co-operative society that they are entitled to receive under this Act and to deal with any matters affecting the co-operative society.

Meeting called by Registrar

44. (1) If—

- (a) in the opinion of the Board it is impracticable—
 - (i) to call a general meeting of members in the manner in which meetings of members may be called; or
 - (ii) to conduct a general meeting of members in the manner prescribed in this Act or in the by-laws; or
- (b) for any reason, in addition to those described in paragraph (a), the Registrar considers appropriate,

the Registrar on his own initiative may, if satisfied that such a meeting is warranted in the circumstances, order a general meeting to be called, held and conducted in any manner that the Registrar may direct.

(2) Without restricting the generality of subsection (1), the Registrar may order that the quorum required in this Act or the by-laws be varied or dispensed with at a general meeting called under this section.

(3) A general meeting called under this section shall be a valid general meeting.

Resolution *in lieu* of meeting

45. (1) Except where a written statement is submitted by an auditor under section 142—

- (a) a resolution in writing signed by the number of members entitled to vote on that resolution at a general meeting of members as may be specified in the by-laws is as valid as if it had been passed at a general meeting of the members; and
- (b) a resolution in writing dealing with any matter required by this Act to be dealt with at a general meeting of members and signed by all the members entitled to vote at that meeting—
 - (i) satisfies all the requirements of this Act relating to meetings of members; and
 - (ii) subject to subsection (2), is effective from the date specified in the resolution.

(2) The effective date of a resolution described in subsection (1)(b)(ii) shall not be earlier than the date on which the first member signed the resolution.

(3) A copy of every resolution described in subsection (1) shall be kept with the minutes of the meetings of members.

Notice of meetings

46. (1) A co-operative society shall give at least ten days notice of any annual general meeting or special general meeting to its members—

- (a) by sending the notice by mail to the members, at the addresses given in the register of members; or
- (b) by publishing the notice in not less than two issues of a newspaper published and circulated in Montserrat, or by posting the notice in a place or through a medium of communication that, as stipulated in the by-laws and in the opinion of the Board, is prominent and accessible to members.

(2) Notwithstanding any other provision of this Act, if a co-operative society is required to send a statement, agreement, proposal or other document to its members with a notice of a meeting and decides to insert the notice of a meeting in a newspaper under paragraph (1)(b), the co-operative society shall—

- (a) in the notice, inform the members of the document, giving a description of the document that, in the opinion to the Board, is adequate to describe its nature; and
- (b) make a copy of the document available to any member who requests it.

(3) The notice of any special meeting shall specify the purpose for which the meeting is being called.

(4) The proceedings or the business transacted at an annual general meeting or special general meeting shall not be invalidated by reason only of the non-receipt by a member of notice of the meeting.

Fixing of record date

47. (1) Subject to subsection (2), for the purpose of determining members—

- (a) entitled to receive payment of a bonus or dividend;
- (b) entitled to participate in a distribution on liquidation; or
- (c) for any purpose in addition to that described in paragraph (a) or (b), except the right to receive notice of or to vote at a general meeting,

the Board may fix in advance a date as the record date for the determination of members.

(2) The record date referred to in subsection (1) shall not proceed, by more than thirty days, the date at which the particular action is to be taken.

(3) Subject to subsection (4), for the purpose of determining members entitled to receive notice of a general meeting, the Board may fix in advance a date as the record date for the determination of members.

(4) The record date referred to in subsection (3) shall not proceed, by more than fifty days or by less than eleven days, the date on which the meeting is to be held.

(5) If the Board does not fix a record date—

(a) the record date for the determination of members entitled to receive notice of a general meeting shall be—

(i) the business day immediately preceding the day on which the notice is given; or

(ii) if no notice is given, the day on which the meeting is held; and

(b) the record date for the determination of members for any purpose other than that described in paragraph (a) shall be the day on which the Board passes a resolution relating to that purpose.

Quorum

48. (1) Subject to subsection (2), the quorum at any annual general meeting or special general meeting of members shall be that specified in the by-laws.

(2) Except where all the members are directors, the quorum specified in the by-laws for an annual general meeting or special general meeting shall not be less than the number of directors plus three.

(3) Subject to the by-laws, if a quorum is present at the time fixed for the opening of a general meeting of members the members present may proceed with the business of the meeting.

(4) If a quorum is not present thirty minutes after the time fixed for the commencement of a general meeting of members—

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

(b) the Registrar or the Registrar's representative may direct that the meeting proceeds if the Registrar is satisfied that the

meeting was convened in accordance with the Act and that the members present were properly notified and constitute at least 75% of the amount required for a quorum.

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

Delegates

49. (1) If the by-laws of a co-operative society provide for the nomination and appointment of delegates to a general meeting—

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

(2) The member who elects a delegate may, at a special meeting called for the purpose or at any annual meeting—

- (a) remove the delegates in any manner provided for in the by-laws; and
- (b) notwithstanding subsection (1), amend the by-laws to eliminate the nomination and appointment of delegates.

Notice of motion

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

- (a) submit to the co-operative society a notice of motion with respect to any matter that he proposes to raise at the meeting; and
- (b) discuss at the meeting any matter with respect to which he would have been entitled to submit a notice of motion.

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

(3) If a member submits a notice of motion and requests the co-operative society to include in or attach to the notice of motion—

- (a) a statement by the member of not more than two hundred words in support of the motion; and
 - (b) the name and address of the member,
- the co-operative society shall comply.

(4) A co-operative society is not required to comply with subsections (2) and (3) if—

- (a) the notice of motion is not submitted to the co-operative society at least forty five days before the anniversary date of the previous annual general meeting of members;
- (b) in the opinion of the directors, the notice of motion is submitted by the member primarily for the purpose of—
 - (i) enforcing a personal claim or redressing a personal grievance; or
 - (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the co-operative society, at the member's request, included a notice of motion in a notice of a meeting of members held within two years preceding the receipt of the notice of motion submitted under subsection (1), and the member failed to present the notice of motion at the meeting;
- (d) substantially the same notice of motion was submitted to members in the notice of a meeting of members held within two years preceding the receipt of the members request, and the notice of motion was defeated; or
- (e) in the opinion of the Board, the rights conferred by this section are being abused to secure publicity.

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

(6) A co-operative society or a person acting on behalf of a co-operative society shall not incur any liability by reasons only of circulating a notice of motion or statement in compliance with this section.

(7) If a co-operative society refuses to include a notice of motion in a notice of a meeting, the co-operative society shall, within thirty days after receiving the proposal—

- (a) notify the member submitting the notice of motion of its intention to omit the notice of motion from the notice of the meeting; and
- (b) send to the member a statement of the reasons for the refusal.

(8) If a member claiming to be aggrieved by a refusal under subsection (7) applies to the Registrar, the Registrar may suspend the holding of the meeting to which the motion is sought to be presented and give any directions that it may consider appropriate.

(9) A co-operative society or a person claiming to be aggrieved by a notice of motion may apply for permission for the co-operative society to omit the notice of the meeting and, if the Registrar is satisfied that subsection (5) applies, the Registrar may give permission.

(10) In this section “**notice of motion**” means a notice of motion submitted to a co-operative society under subsection (1)(a).

Power to make by-laws at meetings

51. (1) Subject to this Act and the by-laws, the members of a co-operative society may, at any annual general meeting or any special general meeting called for that purpose, make, amend, repeal or confirm any by-laws—

- (a) by a majority vote of members present and voting at that meeting, if written notice of the by-laws to be proposed or confirmed were forwarded to each member with the notice of the meeting; and
- (b) by a three-fourths majority vote of members present and voting at the meeting if the notice described in paragraph (a) was not forwarded to each member of the co-operative society.

(2) A member may propose, in the manner provided in section 50, to make, amend or confirm any by-law.

Effective date of the by-laws made at meetings

52. (1) By-laws shall not have any force or effect unless three copies of the by-laws, certified to be true copies by the president and secretary of the co-operative society, are filed with and approved by the Registrar.

(2) Subject to subsection (3), if proposed by-laws are certified under subsection (1) and receives the members’ approval required in section 51(1), the by-laws shall have immediate force and effect.

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

(4) If the Registrar approves by-laws, it shall return to the co-operative society one copy of the by-laws with the approval of the Registrar stamped on the by-laws.

(5) When by-laws are filed and approved in accordance with this section, they shall have effect in the manner described in section 14.

PART 4
MANAGEMENT

Board of directors

53. (1) A co-operative society shall be managed by a Board of directors which shall be constituted in accordance with this Act and the by-laws of the co-operative society.

(2) The Board shall be constituted by not less than five or not more than thirteen directors, as specified in the by-laws.

(3) The members of a co-operative society may amend the by-laws to vary the number of directors, but no amendment to decrease the number of directors shall affect an incumbent director.

(4) A person who—

- (a)* has been sentenced by a Court in any country for an offence involving fraud, dishonesty or violence and has not received a free pardon for that offence;
- (b)* is not in good financial standing with a co-operative society or financial institution;
- (c)* has made an arrangement with his creditors;
- (d)* was a director of a failed co-operative society of the same type;
- (e)* has been convicted on indictment of an offence in connection with the promotion, formation or management of a body corporate;
- (f)* has been convicted of an offence under this Act;
- (g)* is of unsound mind and has been so found by a Court in Montserrat;
- (h)* is or becomes bankrupt;
- (i)* is under the age of eighteen years or, in the case of a junior co-operative, under the age of ten years;
- (j)* has not been a member of the co-operative society or a duly appointed representative of a member co-operative society for the past twelve months;
- (k)* is a member who has not transacted any business with the co-operative society for twelve consecutive months, or who represents a member co-operative society who has not transacted any business with the co-operative society for twelve consecutive months;

- (l) is an employee of the co-operative society or of the Registrar, or is a partner or employee of the co-operative society's auditor, or of the apex body;
 - (m) holds less than the minimum level of equity shares in accordance with section 13(1)(a)(v); or
 - (n) is already part of the management of another co-operative society of the same type,
- may not be a member of the Board of directors or a committee or be employed by the Board, but he may retain his membership of the co-operative society.

(5) A person who knowingly holds membership of the Board or of a committee of a co-operative society, or who knowingly seeks employment with, or is employed or continues to be employed by a co-operative society while disqualified under this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or to both.

Officers

54. (1) A co-operative society—

- (a) shall have a president, a vice-president, a treasurer and a secretary; and
- (b) may have any officers in addition to those referred to in paragraph (a) that are provided for in the by-laws.

(2) Subject to the by-laws—

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

(3) A person shall not be president, vice-president or treasurer of a co-operative society unless he is a director of the co-operative society.

Provisional directors and elected directors

55. (1) On the registration of a co-operative society, the individuals whose names appear in the application for registration as having been appointed and have consented to act as provisional directors—

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

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

Powers of Board

56. Subject to this Act, the Regulations and the by-laws, the Board shall—

- (a) exercise the powers of the co-operative society directly, or indirectly through the employees and agents of the co-operative society;
- (b) ensure the good governance and direct the management of the business and affairs of the co-operative society; and
- (c) formulate and implement the policies of the co-operative society.

Committees generally

57. (1) The Board may establish committees for the more efficient management of various aspects of the business or affairs of the co-operative society.

(2) A committee established under subsection (1) may consist of members of the Board and other members of the co-operative society.

(3) No committee may—

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

Tenure of committees generally

58. (1) Committees appointed under section 57(1) shall hold office for a period not exceeding one year.

(2) A committee member appointed under section 57(1) may be removed by resolution of the co-operative society or of the Board.

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

(4) A committee shall—

- (a) fix its quorum at not less than a majority of its members;
- (b) keep minutes of its proceedings; and

- (c) submit to the Board at each meeting of the Board and to the annual general meeting of the co-operative society the minutes of the committee's proceedings since the most recent meeting of the Board or of the co-operative society.

Credit committee

59. (1) A credit union, central credit union and central co-operative society shall have a credit committee which shall be elected by its members at the annual general meeting.

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

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

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

(5) A person shall not be a member of the credit committee if that person is a member of the Board or of the supervisory and compliance committee or is an employee of the credit union, central credit union or central cooperative society; or has a delinquent loan with the credit union, central credit union or central co-operative society.

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

(7) The election of members of the credit committee shall proceed in accordance with section 72(1)(a) to (d).

(8) If a vacancy occurs in the credit committee, the Board may fill the vacancy until the next annual meeting of the credit union, central credit union or central co-operative society.

(9) The by-laws of a credit union, central credit union or central co-operative society may provide for the election and retirement of members of the credit committee in rotation so that no member of the credit committee shall be elected for a term of more than three years but no person may serve as a member of the credit committee of a co-operative society for more than two consecutive terms or an aggregate of six successive years.

Duties of credit committee

60. The credit committee shall—

- (a) implement and ensure implementation of the approved loan policy;
- (b) provide prudent oversight of the loans portfolio;

- (c) make recommendations to the Board in respect of the loan policy of the credit union; and
- (d) perform such duties as may be prescribed under this Act, the Regulations and the by-laws of the credit union.

Approval of loans

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

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

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

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

Credit committee reports

62. (1) The credit committee shall—

- (a) meet at least once every month;
- (b) keep minutes of its meetings;
- (c) submit a monthly report to the Board stating—
 - (i) the number and category of loan applications;
 - (ii) the number and category of loans granted;
 - (iii) the security taken and risks for loans granted; and
 - (iv) applications denied, delinquent loans, classified loans, loans written off, watch listed accounts, large credit exposures and related party loans; and
- (d) submit an annual report on the matters referred to in paragraph (c), and on the loan portfolio quality and trends, to the annual meeting of the credit union.

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

Removal of members of credit committee

63. (1) The members of a credit union may, by resolution passed by two-thirds of the votes cast at a general meeting called for the purpose, remove

a member of a credit committee before the expiration of his term of office, and shall at that meeting elect another member in place of the first mentioned member for the unexpired portion of his term.

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

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

Removal of members of credit committee by Board

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

Supervisory and compliance committee

65. (1) A co-operative society shall have a supervisory and compliance committee whose members shall be elected by the members of the co-operative society at the annual general meeting.

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

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

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

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

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

(7) The election of members of the supervisory and compliance committee shall proceed in accordance with section 72(1)(a) to (d).

(8) If a vacancy occurs in the supervisory and compliance committee, the supervisory and compliance committee may fill such vacancy until the next annual meeting of the co-operative society.

(9) The by-laws of a co-operative society may provide for the election and retirement of members of the supervisory and compliance committee in rotation, except that a member of the supervisory and compliance committee shall not—

- (a) be elected for a term exceeding three years;
- (b) serve for more than six successive years but shall become eligible for re-election after the expiration of one year.

Duties, functions and powers of supervisory and compliance committee

66. (1) The supervisory and compliance committee shall—

- (a) keep minutes of its meetings;
- (b) make or cause to be made not less than twice in the period before the next annual general meeting of the co-operative society, an examination of the books and documents of the co-operative society which shall include an inspection of the securities, cash accounts and all records relating to loans, purchases and sales;
- (c) make or cause to be made, once in the period before the next annual general meeting, a comparison between the pass-book or statement of account of a random sample of at least 10% of all the members of the co-operative society and the appropriate records of the co-operative society;
- (d) ascertain that all actions and decisions of the Board, committees, management and staff relating to the affairs of the co-operative society are in accordance with this Act, the Regulations, the by-laws and the approved standards and policies of the co-operative society;
- (e) submit a written report on the results of its examinations and enquiries under this section to the Board and the management of the co-operative society within seven days of each meeting of the supervisory and compliance committee; and
- (f) submit a written report on the result of its examinations and enquiries under this section to the next annual general meeting or, if it thinks fit, to a special general meeting of the co-operative society.

(2) The supervisory and compliance committee shall have access, at all times, to the books and documents of the co-operative society.

(3) Members of the supervisory and compliance committee may attend meetings of the Board and all other committees of the co-operative society as observers.

Compliance officer

67. (1) The Board shall appoint a senior qualified professional as a compliance officer to monitor and periodically report to the supervisory and compliance committee and the Board on the levels of awareness, adherence and compliance in the internal operations of the society.

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

Misappropriation and other contraventions of the Act

68. (1) When the supervisory and compliance committee is of the opinion that the funds, securities or other property of the co-operative society have been misappropriated or misdirected, or that the by-laws of the co-operative society, this Act or the Regulations have been contravened, by the Board or a director, the credit committee or a member of the credit committee or by an officer or employee engaged by the Board, the supervisory and compliance committee shall immediately inform the Board and the Registrar in writing.

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

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

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

- (a) suspend the officer by a unanimous vote of all the members of the supervisory and compliance committee taken at a meeting of the supervisory and compliance committee called for the purpose of considering the officer's suspension; and
- (b) convene a special general meeting of the co-operative society to consider whether to remove the officer in light of the action or decision taken by the officer.
- (5) If the Board or a Board member, the credit committee or a member of that committee or an officer or employee engaged by the Board has been suspended by the supervisory and compliance committee in accordance with subsection (4), the committee shall convene for a date not more than twenty one days after the suspension, a special general meeting of the society—
- (a) for the purpose of reviewing the suspension; and
- (b) to consider whether to remove the officer in light of the action or decision taken by the officer.
- (6) Without prejudice to the requirements of section 46, not less than ten days before the date of a meeting of the supervisory and compliance committee called as referred to in subsection (4) or the date of a special general meeting of the co-operative society convened as referred to in subsection (4) or (5), the supervisory and compliance committee shall give written notice of the meeting to the Registrar and to the officer concerned.
- (7) At a special general meeting of a co-operative society held under this section, the members of the co-operative society, according to the purpose or purposes for which the meeting was convened, may, by secret ballot—
- (a) ratify the suspension of the officer concerned and remove the officer from office; or
- (b) rescind the suspension of the officer,
- but an officer shall not be removed from office without being given an opportunity to be heard by the members present at the meeting.
- (8) If an officer of a co-operative society is removed from office at a special general meeting under subsection (7), the vacancy caused by the removal shall be filled in such manner as may be determined by the meeting.

Meetings of the supervisory and compliance committee

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

Removal of member of supervisory and compliance committee by the committee

70. When a member of the supervisory and compliance committee fails to attend three consecutive meetings of the committee without, in the opinion of the other members of the supervisory and compliance committee, reasonable cause, or fails to perform any of the duties allotted to him as a member of the supervisory and compliance committee, the member's position may be declared vacant by the remaining members of the committee and they may appoint a qualified person to fill the vacancy until the next annual general meeting of the co-operative society.

Removal of members of supervisory and compliance committee by members

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

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

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

Election of directors

72. (1) Subject to section 73 and to the Regulations—

- (a) the election of directors shall take place annually at the annual general meeting;
- (b) the directors shall hold office until the conclusion of the meeting at which their successors are elected, and shall be eligible for re-election;
- (c) if the number of members nominated exceeds the number of directors to be elected, the election of directors may be by secret ballot;
- (d) every member shall have the right to vote for the number of directors to be elected and any voting sheet that contains the names of more than the number to be elected shall be void;

- (e) if there are vacancies on the Board but the remaining directors constitute a quorum, they shall call a special meeting of the Board for the purpose of appointing members to fill any such vacancy until the next annual general meeting; and
 - (f) if there is a vacancy on the Board and there is not a quorum of directors, the remaining directors shall call a special meeting of the co-operative society for the purpose of electing members to fill any vacancy.
- (2) When an election of directors required by this Act, the Regulations or the by-laws does not take place at the proper time, the directors then in office shall continue in office until their successors are elected.
- (3) Subject to sections 216(1) and 220, not more than one-third of the directors may be employees of a co-operative society.
- (4) Unless a reasonable excuse is received in writing by the meeting, a person shall not be elected as a director if the person is not present at the meeting at which the election is being conducted.
- (5) Subject to section 72(3), the Board shall consist of such numbers as may be fixed by the by-laws.

Tenure of directors

73. (1) Subject to subsection (3) the directors of a co-operative society shall be elected for a term of three years.

(2) A person shall not serve as a director of a co-operative society for more than six consecutive years but thereafter the person will become eligible for re-election after the expiration of one year out of office.

(3) After the commencement of this Act, on the formation of each new society, or on the re-constitution of a previously registered co-operative society, at the next annual general meeting of members, the election of the Board, the supervisory and compliance committee and the credit committee shall be on a rotational basis as follows:

- (a) at least 1/3 shall be elected to serve for 1 year;
- (b) at least 1/3 shall be elected to serve for two years; and
- (c) the remainder shall be elected to serve for three years,

and thereafter each elected member of the Board, the supervisory and compliance committee and the credit committee shall serve for a term of three years.

Additional powers of the Board

74. (1) Subject to the by-laws and the Regulations, the Board may without authorisation of the members of a co-operative society—

- (a) borrow money on the credit of the co-operative society;
- (b) issue, re-issue, sell or pledge debt obligations of the co-operative society;
- (c) give a guarantee on behalf of the co-operative society to secure performance of an obligation of any person; and
- (d) mortgage, charge, hypothecate, pledge or otherwise create a security interest in all or any property of the co-operative society, owned or subsequently acquired, to secure any debt obligation of the co-operative society.

(2) A sale, lease, exchange of all or substantially all of the property of a co-operative society, other than in the ordinary course of business of the co-operative society, shall be approved by the members in a manner provided in subsection (3) to (7).

(3) The Board shall send in the manner provided in section 46, a notice of a special meeting to consider the sale, lease or exchange referred to in subsection (2) to each member.

(4) The notice referred to in subsection (3) shall be accompanied by a copy or summary of the agreement of sale, lease, or exchange referred to in subsection (2).

(5) At a special meeting held under this section, the members may by special resolution—

- (a) authorise the sale, lease or exchange referred to in subsection (2); and
- (b) agree to or authorise the directors to agree to any terms and conditions of sale, lease or exchange.

(6) Each member of the co-operative society has the right to vote with respect to sale, lease or exchange referred to in subsection (2).

(7) A sale, lease or exchange referred to in subsection (2) is adopted when the members of the co-operative society have approved the sale, lease or exchange by a special resolution.

Validity of acts of directors and officers

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

Indemnification of directors and officers

76. (1) Subject to subsections (2) and (3), a co-operative society may indemnify—

- (a) a director or officer of the co-operative society;
- (b) a former director or officer of the co-operative society; and

- (c) a person who acts or has acted at the request of the co-operative society as a director or officer of a body corporate of which the co-operative society is or was a member or a creditor,
- against costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of the person being or having been a director or officer of the co-operative society or the body corporate.
- (2) A co-operative society may indemnify a director, officer, or other person referred to in subsection (1) only where that person—
- (a) acted honestly and in good faith with a view to the best interest of the co-operative society; and
- (b) in the case of a criminal, civil or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that the conduct was lawful.
- (3) A co-operative society shall not indemnify a director, officer or other person referred to in subsection (1) with respect to an action by or on behalf of the co-operative society to obtain a judgment in its favour to which the person is made a party by reason of the person being or having been a director or an officer of the co-operative society, against costs, charges and expenses reasonably incurred by the person in connection with the action unless—
- (a) the co-operative society has the approval of the Court; and
- (b) the person fulfils the conditions described in subsection (2).
- (4) Notwithstanding subsections (1) to (3), a co-operative society shall indemnify a director, officer or other person referred to in subsection (1) who has been substantially successful in the defence of a civil, criminal or administrative action or proceeding to which the person is made a party by reason of the person being or have been a director or officer of the co-operative society or body corporate against costs, charges and expenses reasonably incurred by the person with respect to the action or proceedings.
- (5) A co-operative society or a director, officer or other person referred to in subsection (1) may apply to the Court for an order approving the indemnity and the Court may make the order.
- (6) On an application under subsection (5), the Court may order notice to be given to an interested person, and that interested person is entitled to appear and be heard in person or by a barrister or solicitor.

Duty of care of directors and officers

77. Every director and officer of a co-operative society in exercising his powers and discharging his duties shall—

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

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

Ambit of duty

78. The provisions of a contract, the by-laws or the circumstances of his appointment do not relieve a director from—

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

Liability of directors

79. (1) If a director votes for, or consents to, a resolution to authorise or approve by any other means—

- (a) the purchase of shares of another co-operative society contrary to section 100;
- (b) the payment of a dividend on shares contrary to section 129;
- (c) the payment of a bonus contrary to section 129;
- (d) a loan or guarantee or the giving of financial assistance contrary to section 121;
- (e) a payment of an indemnity described in section 76 to a director or a former director, without the approval of the court required by section 76(3); or
- (f) an act not consistent with the purpose of the co-operative society as set out in its by-laws and with respect to which the co-operative society has paid compensation to a person,

they are jointly and severally liable to make good any loss or damage suffered by the co-operative society.

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

- (a) the co-operative society is insolvent; or

- (b) the payment of a bonus or dividend or the lending of money would make the co-operative society insolvent.
- (3) The liability imposed by subsection (1) is in addition to and not in derogation from a liability imposed on a director by any other enactment or law.
- (4) Subject to subsection (5), for the purpose of this section, a director who is present at a meeting of directors or of a committee shall be deemed to have cast a vote in favour of a resolution or of granting the approval referred to in subsection (1), unless—
- (a) the director's dissent is entered in the minutes of the meeting; or
 - (b) the director's written dissent is—
 - (i) delivered to the secretary of the meeting before its adjournment; or
 - (ii) delivered or sent by registered mail to the registered office of the co-operative society immediately after the adjournment of the meeting.
- (5) A director who votes for or consents to a resolution referred to in subsection (1) is not entitled to dissent under subsection (4).
- (6) If a director is not present at a meeting of directors or of a committee at which a vote, resolution or approval referred to in subsection (1) is cast or given, the director shall be taken to have cast an affirmative vote, consented to the resolution or given approval, unless, within fourteen days after becoming aware of the proceedings, the director delivers or sends by registered mail his written dissent to the registered office of the co-operative society.
- (7) On receipt of a written dissent, the secretary of the co-operative society shall—
- (a) certify on the written dissent the date, time and place it is received; and
 - (b) keep the written dissent in the minutes of the meeting at which the resolution was passed.
- (8) An action to enforce a liability imposed in subsection (1) shall not be commenced after two years from the date of the meeting at which the vote, resolution or approval was taken or given.
- (9) In an action to enforce a liability imposed in subsection (1), the Court may, on the application of the co-operative society or a defendant—
- (a) join as a defendant a person who received a benefit as a result of the resolution complained of; and

- (b) make the person referred to in paragraph (a) liable to the co-operative society jointly and severally with the directors to the extent of the amount paid to the person.

(10) A director shall not be liable under subsection (1) if the director—

- (a) proves that he did not know or could not reasonably have known that the act authorised by the resolution was contrary to this Act;
- (b) relies and acts in good faith—
 - (i) on statements of facts represented to him by an officer of the co-operative society to be correct; or
 - (ii) on statements contained in a written report or opinion of the auditor of the co-operative society or a professional person engaged by the co-operative society who is competent to give advice in respect to the matter.

(11) A director who is found liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, or other recipient contrary to section 100, 121 or 129.

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

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to section 100, 121 or 129; or
- (b) make an order, other than that described in paragraph (a), that it considers appropriate.

Misuse of confidential information

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

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

(2) Subject to subsection (3), a person who has acquired confidential information concerning a co-operative society or a member of a co-operative society—

- (a) as a director, committee member, officer, employee or auditor of the co-operative society;
- (b) as a liquidator, receiver or manager, of the co-operative society; or
- (c) as a Registrar, an officer or staff referred to in section 5,

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

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

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

(4) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of -one1 year or to both.

Declaration of interests

81. (1) A director, committee member or employee of a co-operative society who—

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

shall disclose in writing to the co-operative society the nature and extent of his interest.

- (2) The disclosure required by subsection (1) shall be made—
- (a) immediately after the director, committee member or employee becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the Board;
 - (b) if the director, committee member or employee becomes interested after a contract is made, immediately after he becomes so interested; or
 - (c) if the director, committee member or employee has an interest in a contract before assuming office, immediately after he becomes a director, committee member or employee.

(3) For the purposes of this section, a notice to the directors by a director, committee member or employee of a co-operative society declaring that he is to be regarded as interested in any contract made with that person is a sufficient declaration of interest in relation to any contract.

Disclosure of interests at meetings

82. (1) If a director, committee member or employee of a co-operative society has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the co-operative society, Board or committee at which the contract, proposed contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine of \$20,000 or to imprisonment for a term of one year, or to both; or
- (b) on conviction on indictment to a fine of \$50,000 or to imprisonment for a term of two years, or to both,

unless the person proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the co-operative society, Board or committee.

(4) An act or proceeding of the co-operative society, Board or committee shall not be questioned on the ground that a director, committee member or employee has contravened this section.

(5) If a director, committee member or employee of a co-operative society is not entitled to vote at a meeting under subsection (1) and his

presence is required to constitute a quorum at the meeting, a decision of the co-operative society, Board or committee is to be taken not to be invalid only by reason of the absence of the director, committee member or employee.

(6) If a director, committee member or employee of a co-operative society fails to disclose his interest in a contract, proposed contract or other matter in accordance with this section, a court may, on the application of a co-operative society or a member of the co-operative society, set aside the contract or other matter on any terms that the Court considers appropriate.

Pecuniary interests for the purposes of section 82

83. (1) For the purposes of section 82, a director, committee member or employee is considered, subject to subsection (2) and (3), as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) he or his nominee is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the licence or other matter under consideration; or
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct pecuniary interest in the licence or other matter under consideration; or
- (c) he or his partner is a professional adviser to a person who has a direct or indirect pecuniary interest in a contract, proposed contract or other matter.

(2) Subsection (1) does not apply to membership of or employment under any public body.

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of section 82 to be also the interest of the other.

Removal or exclusion of disability

84. (1) Section 82 does not apply to an interest in a contract, proposed contract or other matter which a director, committee member or employee of a co-operative society has as a member of the public or to an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(2) If a director committee member or employee of a co-operative society has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of those securities does not exceed \$5,000 or one-thousandth of the total nominal value of the issued share capital of the company or other body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of

any one class in which he has a beneficial interest does not exceed one-thousandth of the total issued share capital of that class, section 82 shall not prohibit him from taking part in the consideration or discussion of the contract, proposed contract or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his or her interest.

Meetings of directors generally

85. (1) Subject to the by-laws, the directors may meet at any place, and on any notice that they consider appropriate.

(2) The president—

(a) may call a meeting of directors at any time; and

(b) on the written request of at least two directors, shall call a meeting within fourteen days of the receipt of the request.

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

(4) Subject to the by-laws, a notice of a meeting of directors may specify the purpose of or other business to be transacted at the meeting.

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

(6) If the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given to the directors present at that meeting, but shall be given to any directors not so present.

Meetings by telephone

86. (1) Subject to the by-laws, if all the directors consent, a meeting of directors or of a committee may be held by means of—

(a) a telephone system; and

(b) a communication facility other than a telephone,

that permits all persons participating in the meeting to hear and speak to each other, and a person so participating is deemed to be present at that meeting.

(2) Unless this Act, the Regulations or the by-laws require a meeting, a resolution of the directors may be passed without a meeting if—

(a) all the directors consent to the resolution in writing; and

(b) the consent is filed with the minutes of the proceedings of the directors.

Attendance at meetings

87. (1) A director of a co-operative society is entitled to receive notice of and to attend and be heard at every general meeting of members.

(2) If a director—

- (a)* resigns;
- (b)* receives a notice or otherwise learns of a meeting of members called for the purpose of removing him from office; or
- (c)* receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed or elected to fill his office, whether because of the director's resignation or removal or because his term of office has expired or is about to expire,

the director is entitled to submit to the co-operative society a written statement giving the reason for his resignation or the reasons he opposes any proposed action or resolution.

(3) A co-operative society shall immediately send a copy of the statement referred to in subsection (2) to the Registrar and shall make available a copy of the statement to every member.

(4) A co-operative society or person acting on its behalf shall not incur any liability by reason only of circulating a director's statement sent in compliance with subsection (3).

Organisational meeting of directors

88. (1) The directors shall hold a meeting within ten days after the issue of the co-operative society's certificate of registration.

(2) The directors may, at the meeting referred to in subsection (1)—

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

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

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

Directors ceasing to hold office

89. (1) A director ceases to hold office when he—

- (a) resigns;
- (b) dies;
- (c) fails to attend three consecutive meetings without an accepted excuse;
- (d) fails to perform any duties allotted to him as a member of the Board;
- (e) is removed in accordance with section 90; or
- (f) is no longer qualified in accordance with this Act.

(2) A resignation of a director becomes effective—

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

Removal of directors

90. (1) Subject to the Regulations and the by-laws, the members of a co-operative society may, by special resolution, remove any director from office.

(2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or if not so filled, may be filled under section 72(1)(e).

Notice of change of directors

91. (1) Within thirty days after a change is made in its directors, a co-operative society shall send to the Registrar a notice in the prescribed form setting out the change and the Registrar shall file the notice.

(2) Notwithstanding subsection (1), if a co-operative society sends the annual return in accordance with section 147, within thirty days after a change is made in its directors, it is not required to send the notice required by this section.

Declaration by directors and officers

92. A co-operative society may by resolution passed by a majority of the members at an annual or special meeting require all directors and officers to sign annually or at any other time that may be specified in the resolution a declaration relating to—

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

Bonding

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

Remuneration of directors

94. (1) A co-operative society shall not pay any remuneration directly or indirectly to a director or committee member in connection with his duties or for any service performed by that person in that capacity.

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

- (a) which are necessarily incurred by a director or committee member in the course of performing any service on behalf, or for the benefit, of the co-operative society; and
- (b) which are approved by a majority of the directors voting at a meeting of the Board.

(3) Nothing in subsection (1) shall be regarded as prohibiting any director or committee member of a co-operative society, acting not as a director or committee member but in his professional capacity, from tendering for the supply of, and if successful being paid for supplying, goods or services to the co-operative society.

(4) The directors may be granted such honorarium as—

- (a) may from time to time be approved prior to its payment, or the payment of any part thereof, by the members in general meeting; and
- (b) does not exceed an amount recommended by the Board and approved by a general meeting of the members.

(5) A co-operative society may purchase and maintain insurance for the benefit of a director, member of a committee, officer or employee against a liability, loss and damage incurred by that person while serving the co-operative society as a director, officer, committee member or employee.

Remuneration of officers and employees

95. Subject to section 94 and the by-laws, the directors shall fix the salary of any employees appointed by the directors and shall approve a scale of remuneration for all employees of a co-operative society.

PART 5

FINANCING

Shares

96. (1) A co-operative society may sell equity shares to its members only, but these shares shall be non-withdrawable but redeemable in accordance with the Regulations and the shares shall have a par value fixed by the by-laws.

(2) Unless a co-operative society is required by this Act or any other enactment to limit its number of shares it shall have an unlimited number of shares.

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

Share capital

97. (1) A co-operative society shall express its share capital in its by-laws as—

- (a)* an amount of money divided into a specified number of shares set out in the by-laws; or
- (b)* an amount comprising an unlimited number of shares with a specified par value.

(2) A co-operative society shall issue qualifying shares as well as equity shares, provided that, the value of the qualifying shares and equity shares owned by the members shall not fall below the equivalent of 10% of the asset worth of the co-operative society as a result of any redemption of shares.

(3) The Registrar shall grant such period of time, not exceeding three years from the commencement of this Act, as the Registrar considers reasonable to enable an existing society to make good any deficiency in the adequacy of its capital base.

Issue of shares

98. (1) Subject to subsection (2), a co-operative society may issue shares at any time and for any consideration that the directors consider appropriate.

(2) Subject to the by-laws, a co-operative society shall sell its shares at their par value.

(3) A member shall not be liable to the co-operative society or its creditors beyond the sum remaining unpaid on the member's subscription for shares.

(4) A co-operative society shall not issue a share until it is fully paid—

(a) in money; or

(b) in property that, in the opinion of the directors, is the fair equivalent of the money that the co-operative society would have received if the share had been issued for money.

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

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

Alteration of authorised capital

99. (1) Subject to the approval of the Registrar a co-operative society may, by special resolution, increase or decrease its share capital and, for that purpose, may—

(a) subdivide any shares;

(b) consolidate shares into shares of a larger par value, but the par value of consolidated shares shall not be greater than \$100;

(c) cancel any shares that, at the date of registration of the by-laws, have not been subscribed for or agreed to be issued and diminish the amount of its share capital by the amount of the par value of the shares so cancelled;

(d) extinguish or reduce the liability on any of its shares with respect to share capital not paid up;

(e) with or without extinguishing or reducing liability on any of its shares, cancel any paid up share capital that is lost or unrepresented by available assets; and

(f) with or without extinguishing or reducing liability on any of its shares and either with or without reducing the number of such shares, pay off and paid-up share capital that is greater than the requirements of the co-operative society.

(2) The Registrar may give his approval under subsection (1) if the Registrar is satisfied that—

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

Limitation on purchase of shares

100. Subject to the approval of the Registrar, only a registered co-operative society may purchase 20% or more of the shares of another co-operative society if—

- (a) that other co-operative society is insolvent;
- (b) the proposed purchase or acquisition would not render the purchasing co-operative society insolvent; or
- (c) subject to paragraph (b), the proposed purchase or acquisition would not, in the opinion of the Board, be detrimental to the financial stability of the purchasing co-operative society.

Transfer of shares generally

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

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

(3) A transfer of shares shall be effected in such form as the Registrar may determine.

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

(5) A transfer of a share, if made by a member indebted to the co-operative society, shall not be registered without the written permission of the Board and until the transfer is registered—

- (a) a right shall not be acquired against the co-operative society by the transferee; and
- (b) a claim of the co-operative society upon the transferor shall not be affected by the transfer.

Transfer of shares of member of unsound mind

102. (1) If a member or person claiming through a co-operative society has become of unsound mind or incapable of managing his affairs and no committee, receiver or guardian has been appointed, the co-operative society may —

- (a) if that member has previously nominated a person for the purpose of section 106 and subject to this section and section 101, transfer the share or interest of that member to the person nominated by him for the purposes of section 106 or may pay to the person nominated a sum representing the value of the share or interest of such member ascertained in accordance with subsection (5);
- (b) if no person was previously nominated for the purpose of section 106, apply to the Court for an order nominating a person to whom the shares or interest of the member may be transferred.

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

(3) If the value of the share or interest does not exceed \$100 the Board may, subject to any conditions it thinks fit, pay the whole or any portion of such sum to the person who appears to have the care of the member or the management of the member's affairs.

(4) All transfers and payments made by a co-operative society in accordance with this section shall be valid and effective against any demand made upon the co-operative society by any person.

(5) For the purposes of this section and section 100, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the co-operative society otherwise provide.

(6) If the benefits group insurance have accrued on such share or interest, the value of such benefits shall be the amount actually received by the co-operative society on the account of such deceased member.

(7) For the purposes of this section, a person of **“unsound mind”** means a person who has been adjudicated to be of unsound mind under the Mental Treatment Act.

Transfer of share or interest on death of member

103. (1) On the death of a member of a co-operative society, if a person has been nominated by the member in accordance with section 106 and the nominee is admitted to membership of the co-operative society, the co-operative society shall within one year of the death of the member by whom the nomination was made, transfer the shares or interest of such deceased member to the nominee.

(2) On the death of a member of a co-operative society, if a person has been nominated by the member in accordance with section 106 has not been admitted to membership of the co-operative society or if the deceased member made no such nomination, the co-operative society shall within one year of the death of the member pay either to the nominee or to the legal personal representative of the deceased member, such sum as represents the value or part thereof of the deceased member's share or interest in the co-operative society.

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

(4) If after a period of one year there is no nominee or legal personal representative of the deceased member to which the shares or interest may be transferred or to which a sum representing the value or part thereof of the deceased member's share or interest may be paid, the share or interest shall be transferred to the development fund of the co-operative society.

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

Restrictions on transfer of shares

104. Shares or interest or any part thereof in the capital of a co-operative society shall not be transferred unless the transfer is made to a member thereof or to a person whose application for membership has been accepted.

Conditions for the validity of transfer of shares

105. (1) Subject to the by-laws, a transfer of shares in a co-operative society is not valid for any purpose unless—

- (a) a written application for membership by the transferee is approved and the transfer is authorised by—
 - (i) a resolution of the directors; or
 - (ii) a person authorised by a resolution of the directors to approve applications and transfers of that kind; and

- (b) notification of any approval given under paragraph (a) is sent to the transferee and his or her name has been entered on the register of members.
- (2) Notwithstanding subsection (1), a transfer of a share is valid for the purpose of providing evidence of the rights of the parties to the transfer between the transferor and the transferee.

Power of nomination

106. (1) A member of a co-operative society may nominate a person or persons to or among whom there shall be transferred at his death such property in the co-operative society of which he is the owner at the time of his death, or as may subsequently have accrued thereon, whether in shares, loans or deposits, or so much thereof as is specified in such nomination if the nomination does not comprise the whole.

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

(3) A member of the co-operative society may nominate more than one person only if he holds more than one share.

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

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

PART 6

BUSINESS OF CO-OPERATIVE SOCIETY

Marketing of produce through the co-operative society

107. (1) A co-operative society which has as one of its objects the marketing of any article of produce obtained by the work or industry of its members may by its by-laws or otherwise contract with its members—

- (a) that every member who produces any such article shall market the whole or any specified amount, portion or description thereof to or through the co-operative society; and
- (b) that any member who is proved or adjudged to have contravened the by-laws or to have acted in breach of the

contract shall pay to the co-operative society liquidated damages in a sum ascertained or assessed in such a manner as may be prescribed in the by-laws.

(2) A contract entered into under this section shall not be questioned in any court on the ground only that it is a contract in restraint of trade.

Creation of charge in favour of a co-operative society

108. (1) A person to whom money has been lent by a co-operative society or who is otherwise indebted to the co-operative society may be required to create a charge in favour of the co-operative society in such form as may be prescribed in Regulations.

(2) A charge shall, so long as it continues in force, confer on the co-operative society the right—

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

(3) A co-operative society shall pay any surplus of the proceeds of a sale of property under subsection (2) to the member whose property was sold.

(4) A charge shall, so long as it continues in force, impose on the chargor an obligation to pay to the co-operative society, towards the discharge of his indebtedness, the proceeds of sale of any property that is subject to the charge or any money received under any policy of insurance or by way of compensation in respect of any such property, except in so far as the charge otherwise allows.

(5) A charge under this section is not a bill of sale within the meaning of the Bills of Sale Act (Cap. 15:14).

Execution and registration of charge

109. (1) A charge created under section 108 shall be duly executed if signed by the person in quintuplicate in the presence of—

- (a) the president of the co-operative society; and
- (b) the secretary of the co-operative society.

(2) The secretary shall file one copy of the charge at the registered office of the co-operative society and deliver one copy each to the —

- (a) Registrar of the High Court;
- (b) Registrar;
- (c) apex body; and
- (d) person who created the charge in favour of the co-operative.

(3) The Registrar of the High Court shall keep a book known as the “**Co-operative Societies Charges Book**” in which the Registrar shall register every charge delivered to him by the secretary of a co-operative society, and issue to the co-operative society a certified copy of the registered charge.

(4) The registration of a charge under subsection (3) shall be deemed to affect with notice any person dealing with the property that is subject to the charge.

(5) If a loan or other indebtedness in respect of which a charge was created is discharged, the secretary of the co-operative society shall—

- (a) cause a document to that effect to be prepared in quintuplicate and signed by the president and secretary of the co-operative society;
- (b) file one copy of the document signed under paragraph (a) at the registered office of the co-operative and deliver one copy each to the—
 - (i) Registrar;
 - (ii) the apex body;
 - (iii) the Registrar of the High Court who shall forthwith make an entry of satisfaction in the Co-operative Societies Charges Book; and
 - (iv) person who discharged the charge.

(6) A person may, on payment of the fee prescribed in regulations made under this Act, inspect and take extracts from the Co-operative Societies Charge Book.

(7) A charge subsisting at the commencement of this Act in favour of a co-operative society shall be deemed to be registered in the Co-operative Societies Charges Book, and any such charge shall, without prejudice to anything contained therein, have the same force and effect as a charge created under this Act.

Claims unaffected by charge

110. Nothing in section 108 shall affect—

- (a) any claim of the Government in respect of taxes or money recoverable as such;
- (b) any claim of a landlord in respect of rent or money recoverable as rent; or
- (c) the rights of any prior charges or encumbrance.

Prior claims in favour of co-operative society

111. (1) Subject to any claim in respect of a debt due to the Crown or to a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand owing to a co-operative society by a member or past member shall, notwithstanding anything contained in section 109, be a first charge—

- (a) upon the crops or other agricultural produce whether standing or severed, cultivated in whole or in part with the loan from the co-operative society by such member or past member; and
- (b) upon any livestock, fodder for livestock, agricultural or industrial machinery or implements, raw materials for use in manufacture or handicraft, building used for the purpose of agriculture or industry, fishing or fish processing equipment purchased by such member or past member in goods or money granted to the member by the co-operative society.

(2) A person dealing with any of the property specified in subsection (1) shall be deemed to have notice of such first charge and all such dealing shall be subject to the charge and priority created by this Act.

Enforcement of charge

112. (1) A co-operative society may enforce a charge by applying to the Magistrate for a warrant of distress by certifying under seal to the Magistrate the amount due and particulars of the property so charged and the Magistrate shall issue a warrant of distress and may offer the sale of the property by public auction or private treaty.

(2) A Magistrate shall have jurisdiction under subsection (1) even though the amount due exceeds the limits of jurisdiction of a Magistrate specified in the Magistrate's Court Act.

Assignment of charge

113. (1) A co-operative society may borrow from any other co-operative society or from a financial institution referred to in section 120(2)(c) with the approval of the Registrar on the security of a charge executed and

registered in accordance with section 109 and may for this purpose assign the charge to the other co-operative society or financial institution.

(2) An assignment of a charge under this section shall be registered in the same manner as a charge and section 109 shall apply, subject to any necessary modifications, to an assignment so registered.

(3) Subject to section 110, an assignment of a charge when registered shall operate as a first charge in favour of the assignee.

(4) If a charge is assigned to a central co-operative society, the co-operative society may borrow from any financial institution referred to in section 120(2)(c) and for this purpose may re-assign any such charge to the financial institution and subsections (2) and (3) shall apply, subject to any necessary modifications, to such reassignment.

Bond as security for charge

114. (1) A co-operative society may require a member to give a bond with or without sureties as additional security for the repayment of a loan.

(2) Conditions imposed on the member or officer relating to the payment of principal and interest under a charge or loan agreement shall be strictly observed and performed by the member and on breach of any condition the bond shall be forfeited forthwith.

(3) Section 113 relating to the assignment of charges shall apply with any necessary modifications to the assignment of bonds.

Lien on shares

115. (1) A co-operative society shall have a lien on a share or any amount outstanding to the credit of a member or his legal representative for a debt due by that member to the co-operative society.

(2) A co-operative society may enforce a lien referred to in subsection (1) in the manner set out in its by-laws.

(3) A Board may, in default of payment by any member indebted to a co-operative society, apply the sum paid up for the time being on any shares held by that member in or towards the discharge of the debt and any expenses relating to the debt or its discharge, and the defaulting member shall cease to have any further claim in respect of such shares.

Deductions applied to loans and shares

116. (1) The by-laws of a co-operative society, other than a credit union, may provide that the co-operative society may—

- (a) deduct an amount from the moneys it receives for the goods, products or services it has marketed, handled, or dealt in for or on behalf of a member or non-member patron; and

- (b) apply the amount prescribed in paragraph (a) towards a loan or the purchase of shares on such terms as the Board may determine.

(2) For the purpose of this section “**non-member patron**” means a person who does regular business with the co-operative society but who is not a member.

Purchase of shares

117. (1) Subject to section 115, a co-operative society may purchase or otherwise acquire any of its shares that are—

- (a) available for compulsory purchase under section 119; or
(b) offered for sale.

(2) A co-operative society shall pay in cash, within one year of the date of purchase, for any shares purchased under subsection (1).

(3) A co-operative society shall pay a purchase price for a share purchased under this section equal to the par value of the share together with any dividends declared but unpaid with respect to the share.

(4) Subject to subsection (5), if a co-operative society purchases or otherwise acquires shares issued by it, those shares shall be deemed to be cancelled.

(5) If the by-laws of a co-operative society limit the number of shares that may be issued by the co-operative, any shares of the co-operative society purchased or otherwise acquired by the co-operative society may be treated as unissued shares.

Prohibition on purchase of shares

118. (1) Notwithstanding section 117, a co-operative society shall not purchase or otherwise acquire its shares if—

- (a) it is insolvent;
(b) the proposed purchase or acquisition would render it insolvent; or
(c) subject to subsection (2), the proposed purchase or acquisition would, in the opinion of the Board, be detrimental to the financial stability of the co-operative society.

(2) If a purchase or other acquisition of shares under section 117 or 119, would in the opinion of the Board, impair the financial stability of the co-operative society or would be contrary to the interest of the remaining members the Board may suspend the purchasing or acquisition of shares.

(3) The Board may not suspend the purchase of shares under subsection (2) for a period longer than one year unless the suspension is approved by—

- (a) the Registrar; or
- (b) a special resolution of the members.

Compulsory purchase of shares

119. If—

- (a) winding-up proceedings have commenced with respect to a body corporate that is a member of a co-operative society; or
- (b) a member of a co-operative society has, during a period of two years, failed to transact any business with the co-operative society,

the co-operative society may, by written notice to the member, require the member to sell his shares to the co-operative society.

PART 7

PROPERTY AND FUNDS OF CO-OPERATIVE SOCIETY

Investment of funds

120. (1) The Board shall establish written policies for investing the accumulated funds of the co-operative society not used in the primary business of the co-operative society, and shall ensure they are in compliance with the law.

(2) Subject to subsections (3) and (4), the funds of a co-operative society including the reserve may be invested or deposited in the following—

- (a) a central credit union, central finance facility, deposit guarantee or stabilisation fund for credit unions or co-operative societies, or other co-operative society registered under this Act;
- (b) shares, deposit accounts, loans to, or loans on the security of, a co-operative society with limited liability;
- (c) any financial institution licensed under the Banking Act, or any company registered under the Insurance Act;
- (d) any stock, debentures, funds or securities issued by the government;
- (e) securities, for which the payment of interest is guaranteed by the government;
- (f) securities issued in a CARICOM Member by a company incorporated in that country and listed on the stock exchange of a CARICOM Member if the company has paid dividends on its shares for the preceding five consecutive years;

- (g) securities issued in a CARICOM Member by a credit union that is registered in a CARICOM Member in accordance with the laws of that CARICOM Member;
- (h) real property, subject to section 199(5), if the co-operative society is a credit union; and
- (i) any other investment permitted by the Registrar.

(3) The investments referred to in subsections (2)(d), (e), (f), (g) and (i) shall not exceed in aggregate ten% of the unimpaired capital of a credit union.

(4) The equity investment of a co-operative society in any entity shall be limited to 20% of the equity investment of that entity.

(5) A society shall not invest the funds referred to in subsection (2) in a single institution or instrument.

Loan by credit union

121. (1) The Board of a credit union, a central credit union or central co-operative society shall establish written policies for the consideration, approval and administration of loans, guarantees, advances and other forms of financial assistance as a primary service to its members.

(2) Loans shall be made only by a co-operative society referred to in subsection (1) and except for a loan to another co-operative society, a loan shall not be made to a person who is not a member.

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

(4) A loan shall not be made to a director, committee member or employee referred to in subsection (3) on a term relating to interest rates, discounts or waivers or on any other terms more favourable than those offered to the general membership.

(5) A loan shall not be made to a director, committee member or employee referred to in subsection (3), if when combined with all other outstanding loans to persons referred to in subsection (3), the persons' business interest or the persons' immediate family, it exceeds 20% of the credit union's net worth.

(6) Unless with the prior approval of the Registrar, a loan shall not be made by a credit union to a member or a group of related members if the loan would cause the aggregate amount of loans to the member of the group of related members to exceed 10% of the share capital.

(7) In accordance with section 82, a director, committee member or employee of a credit union shall declare his interest in a loan at a meeting

in which the loan is being discussed and shall not be present at or participate in a meeting when his application for a loan is being considered.

(8) Any loan made in contravention of this section shall be void and shall be repaid to the co-operative society immediately.

(9) Subject to the other provisions of this section, the by-laws of a credit union shall provide for limits on the amounts of loans to any one member or on any type of loans.

Prohibited loans

122. Subject to this Act, a co-operative society shall not, directly or indirectly, give a loan, guarantee or other means of financial assistance—

(a) to a member, director, officer, committee member or employee of the co-operative society or an associate of any such person for any purpose; or

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

if there are reasonable grounds to believe that the co-operative society is insolvent or would, after giving the financial assistance, be insolvent.

Receipt of loans and deposits

123. (1) Any by-laws of a co-operative society, a co-operative society may receive loans, grants and donated capital from persons or institutions that are not members of the co-operative society for the purpose of meeting any of its obligations or discharging any of its functions under this Act.

(2) A co-operative society may by mortgage or in any other manner it deems appropriate, guarantee the repayment of any sums received by it under subsection (1).

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

Receipt of deposits from minors and other legally disabled persons

124. (1) A co-operative society may receive deposits from or on behalf of a minor and pay to the minor such deposit together with the interest accrued thereon.

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

(3) A receipt from a minor, his parent or guardian for money received under this section shall be a good and sufficient discharge of the liability of the co-operative society in respect of that money.

(4) If a person under a legal disability, other than minority, is entitled to receive money from a co-operative society such money may be paid by the co-operative society to the Registrar of the High Court to the credit of such person under such disability, and the receipt of the Registrar of the High Court or of the person under disability shall be good and sufficient discharge of the liability of the co-operative society to pay that money.

(5) The Registrar of the High Court may retain out of any money so paid to him a sum not exceeding 1% thereof for fees of office and shall pay or apply the remainder to or for the care, maintenance, education or benefit of the person under disability.

Allocation of surplus

125. (1) If a co-operative society realises a surplus in a financial year before it allocates among or credits members the surplus, the directors—

- (a) shall use any part of the surplus that the co-operative society will require to refund all or any part of a deficit it has previously incurred;
- (b) shall establish and maintain a reserve to be known as its statutory reserves; and
- (c) may provide, out of any surplus remaining after paragraphs (a) and (b) have been complied with, in the manner set out in its by-laws for payment out of the surplus, dividends on members' equity shares.

(2) The statutory reserves required by subsection (1)(b) shall be part of the institutional capital of the co-operative society and may, subject to the approval of the Registrar, be used in the business of the co-operative society, for purposes including—

- (a) meeting unforeseen losses and unexpected shortfalls in liquid cash;
- (b) capital retention;
- (c) improving earnings;
- (d) financing of non-earning assets;
- (e) repair and maintenance; and
- (f) avoidance of external borrowing.

(3) A co-operative society shall ensure that its statutory reserves and other institutional capital reserves are, at no stage, less than 10% of its total assets.

(4) If at the end of any financial year the amount standing to statutory reserves and other institutional capital reserves before any transfer under this section is less than 10% of total assets, the co-operative society shall transfer to statutory reserves for that year, 20% of its surplus or such

lesser sum as may be required to increase the statutory reserves to 10% of total assets.

(5) If at the end of any financial year the amount standing to statutory reserves and other institutional capital reserves before any transfer under this section is more than 10% of total assets, the co-operative society may not make any transfer to statutory reserves.

(6) The Registrar shall grant such period of time as the Registrar considers reasonable to enable management to make good any deficiency in the adequacy of its capital base.

Development fund

126. (1) A co-operative society shall establish and maintain a development fund, which may include any existing education fund or educational reserve.

(2) A co-operative society that realises a surplus from its operations as ascertained by the annual audit shall make an annual contribution to its development fund, as determined by the apex body, not exceeding 10% of that surplus, and such fund shall be used for strengthening the capacity and growth of co-operative societies and for human resource development.

(3) Subject to subsection (4), a co-operative society's development fund shall be administered in part or in whole by the apex body in accordance with its by-laws.

(4) If an apex body has not been established or is not functioning as such, the development fund shall be administered by such person or body of persons as the Registrar may determine, with the approval of the active co-operative societies.

Pension fund

127. (1) A co-operative society may establish a contributory pension fund for its employees and may contribute to such fund.

(2) A pension fund established under subsection (1) shall not be considered part of the assets of the co-operative society but may be invested in such manner as may be prescribed by the by-laws.

Charitable contributions

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

Dividend or bonus

129. (1) Subject to this section and sections 125 and 126, any surplus may be distributed by way of dividend or bonus among its members in

proportion to their business with the co-operative society at such rate as may be prescribed.

- (2) A co-operative society shall not—
- (a) declare or pay a dividend or bonus or distribute any part of its accumulated funds before the financial statements have been certified by a qualified auditor;
 - (b) pay a dividend or make any payment on account out of a surplus until its institutional capital has reached a proportion of not less than 10% of the total assets of the co-operative society; or
 - (c) declare or pay a dividend from unrealised gains including stock grants or share grants or gains arising from asset revaluation.

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

PART 8

FINANCIAL DISCLOSURE AND AUDIT

Annual financial statement

130. (1) The directors of a co-operative society shall place before the members at every annual meeting of members of the co-operative society—

- (a) comparative financial statements relating separately to—
 - (i) the period that began on the date the co-operative society came into existence and ended not more than twelve months after that date, or, if the co-operative society has completed more than one financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than twelve months after the beginning of that period; and
 - (ii) the period immediately preceding financial year referred to in sub-paragraph (i), if any;
- (b) the report of the auditor on the financial statements referred to in paragraph (a); and
- (c) any further information respecting the financial position of the co-operative society and the results of its operations required by the by-laws.

(2) The financial statements referred to in subsection (1)(a)(ii) may be omitted if the reason for the omission is set out in the financial statement to be placed before the members or in a note attached thereto.

(3) The financial statements referred to in subsection (1)(a) shall include the balance sheet and detailed income statement in respect of all business transacted by the co-operative society in the financial years covered by the statements, prepared in accordance with international accounting standards and including consolidated balance sheets and income statements in any case if the co-operative society has subsidiaries or associated companies.

Approval of financial statements

131. (1) The directors of a co-operative society shall approve the financial statements referred to in section 130, and the approval shall be acknowledged by the signature of two or more directors.

(2) A co-operative society shall not issue, publish or circulate copies of the financial statements referred to in section 130 unless the financial statements are—

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by an auditor's report and management letter from the co-operative society's auditor.

(3) A co-operative society shall send to the Registrar a copy of the financial statements, auditor's report and management letter referred to in section 130 within ten days prior to the annual general meeting of the co-operative society.

Providing financial statements

132. (1) At least ten days before each annual meeting of members, a co-operative society shall make available to each member a copy of the financial statements and report of the auditor referred to in section 130.

(2) If a co-operative society applies to the Registrar and the Registrar is satisfied that there are reasonable grounds, the Registrar may excuse the co-operative society from complying with subsection (1).

Auditor's qualifications

133. Subject to section 134, a co-operative society's auditor shall be an external auditor who is a chartered accountant, a certified public accountant, a member of the Institute of Chartered Accountants of the Eastern Caribbean or a member of a recognised professional body satisfactory to the Registrar and qualified to conduct audits.

Disqualifying auditor

134. (1) Subject to subsection (7), an individual shall not be qualified to be an auditor of a co-operative society if he is not independent of the co-

operative society and its member co-operative societies, and of the directors and officers of the co-operative society.

(2) For the purposes of this section whether or not an individual is independent is a question of fact to be determined having regard to all the circumstances.

(3) An individual shall be presumed not to be independent if he or his business partner—

- (a) is a member, a director, an officer or an employee of the co-operative society or any of its member co-operative societies or a business partner or employee of any director, officer, member of employee of any such co-operative society, or its member co-operative societies;
- (b) is a member of a credit committee or any other committee of the co-operative society or any of its member co-operative societies;
- (c) transacts a substantial amount of business with the co-operative society or any of its member co-operative societies;
- (d) is a chief executive officer, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the co-operative society, was employed by that individual and participated in any capacity in the audit of that co-operative society during the one year period preceding the date of the initiation of the audit; or
- (e) provides to the co-operative society contemporaneously with the audit, any non-audit service including—
 - (i) bookkeeping or other services relating to the accounting records or financial statements of the co-operative society;
 - (ii) financial information systems design and implementation;
 - (iii) appraisal or valuation services, fairness opinions, or contributions-in-kind reports;
 - (iv) actuarial services;
 - (v) internal audit outsourcing services;
 - (vi) management functions or human resources;
 - (vii) broker, dealer or investment adviser services;
 - (viii) legal services and expert services unrelated to the audit; or
 - (ix) any other service that the Registrar determines is not permissible.

(4) The provision of professional advice by or on behalf of an individual or his business partner shall not by itself deprive an individual or his business partner of his independence for the purposes of this section.

(5) An auditor who becomes disqualified under this section or has been replaced or whose term has expired shall immediately notify the Registrar in writing and state the reasons for termination of his appointment.

(6) A member of a co-operative society may apply to the Registrar for an order or the Registrar may, upon its own motion, make an order declaring an auditor disqualified under this section and the office of auditor vacant.

(7) A member of a co-operative society may apply to the Registrar for an order or the Registrar may upon his own motion make an order which exempts an auditor from disqualification under this section and the Registrar may, if he is satisfied that an exemption would not adversely affect the members, exempt the auditor on terms as the Registrar thinks fit.

Appointment of auditor

135. (1) Subject to subsection (4), the members of a co-operative society shall—

- (a) at the first general meeting, appoint an auditor to hold office until the close of the first annual general meeting; and
- (b) at each annual meeting, appoint an auditor to hold office until the close of the next annual general meeting.

(2) Notwithstanding subsection (1)(b), if an auditor is not appointed at an annual meeting, the incumbent auditor shall continue in office until his successor is appointed at a subsequent meeting.

(3) The remuneration of an auditor shall be specified by the Board.

(4) An individual shall not accept appointment, consent to be appointed or be appointed as auditor of a co-operative society if he is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual has requested and received from the former auditor a written statement of the circumstances and reasons why, in the auditor's opinion, the auditor is to be replaced.

(5) Notwithstanding subsection (4), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a co-operative society if, within twenty one days of making the request referred to in that subsection, the individual does not receive a reply to it.

(6) An auditor shall not assume office unless he has confirmed in writing to the co-operative society his willingness to serve as auditor.

Cessation of office

136. (1) An auditor of a co-operative society ceases to hold office when he—

- (a) resigns by giving written notice to the co-operative society;
- (b) is removed under section 137; or
- (c) has held the office for five consecutive years.

(2) The resignation of an auditor shall become effective at the time his written resignation is sent to the co-operative society, or at the time specified in the resignation, whichever is the later date.

(3) The cooperative society shall notify the Registrar in writing of the resignation of an auditor under subsection (1) within seven days of receipt of the resignation.

Removal of auditor

137. The members of a co-operative society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 139.

Filling vacancy of auditor

138. (1) Subject to subsection (4), if an auditor appointed under section 135 is unable to complete his term in office for any reason other than cessation of office under section 136, the directors shall immediately fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within twenty one days after a vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy.

(3) If the directors fail to call a meeting under subsection (2) or if there are no directors, a meeting for the purpose of filling a vacancy in the office of auditor may be called by any member.

(4) The by-laws of a co-operative society may provide that a vacancy in the office of auditor be filled only by vote of the members.

(5) An auditor appointed to fill a vacancy shall hold office for the unexpired term of his predecessor.

Auditor appointed by Registrar

139. If a co-operative society does not have an auditor, the Registrar may, upon the Registrar's own motion and shall, upon the application of a member, appoint and specify the remuneration of an auditor, and the auditor shall, subject to section 133, hold office until an auditor is appointed in accordance with section 135.

Auditor's right to notice

140. The auditor of a co-operative society is entitled to receive notice of every annual general meeting of the members of the co-operative society, and to be heard in presenting his report at the meeting.

Required notice

141. If a member of a co-operative society who is entitled to vote at a meeting of members, or a director of a co-operative society, gives written notice to the auditor or a former auditor of the co-operative society, not less than ten days before a meeting of members of the co-operative society, to attend the meeting, the auditor or former auditor shall attend the meeting at the expense of the co-operative society and answer questions on matters which are connected to his duties as an auditor or former auditor.

Auditor's right to comment

142. (1) An auditor who—

- (a) resigns;
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing the auditor from office; or
- (c) receives a notice or otherwise learns of a meeting of members or directors at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because the auditor's term of office has expired or is about to expire,

may submit to the co-operative society and to the Registrar a written statement giving the reason for his resignation or the reasons why he opposes any proposed action.

(2) When it receives a statement referred to in subsection (1), the co-operative society shall immediately send a copy of the statement to every member entitled to receive notice of any meeting of members and to the Registrar.

Examination by auditor

143. (1) The auditor of a co-operative society shall examine its books and records and shall make a report upon the annual financial statements and financial position to be placed before the members, and in every such report the auditor shall state whether in the auditor's opinion the balance sheet and income and expenditure account give a true and fair view of the state of affairs of the society and of its results for the period then ended and submit any additional information in relation to the audit of the co-operative society as the Board or the Registrar considers necessary.

(2) It shall also be the duty of the auditor to certify whether the appropriate measures to counter money laundering and other suspicious transactions are in place.

Auditor's right to inspect

144. (1) Upon the demand of an auditor of a co-operative society a present or former director, member of a committee, officer, employee or agent of the co-operative society shall provide to the auditor—

- (a) information and explanations; and
- (b) access to records, documents, books, accounts and vouchers of the co-operative society,

that are in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 143 and that a director, officer, employee or agent are reasonably able to provide.

(2) Upon the demand of the auditor of a co-operative society, the directors of the co-operative society shall—

- (a) obtain from a present or former director, member of a committee, officer, employee or agent of the co-operative society, the information and explanation that the director, officer, employee and agent are reasonably able to provide and that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 143; and
- (b) provide the information and explanations so obtained to the auditor.

(3) A former or present director, officer, member of a committee, employee or agent of any member of a co-operative society, shall not take any action fraudulently to influence, coerce, manipulate or mislead an independent auditor in the performance of an audit of the financial statements of a co-operative society for the purpose of rendering such financial statements materially misleading.

(4) A former director, officer, employee or agent of the co-operative society who contravenes subsection (2) or (3) commits an offence and is liable on summary conviction—

- (a) in the case of a first offence, to a fine of \$25,000, or to imprisonment for a term of three months or both;
- (b) in the case of a second or subsequent offence, to a fine of \$40,000, or to imprisonment for a term of one year or both.

Error or misstatement

145. (1) A director or an officer of a co-operative society shall forthwith notify the auditor of a co-operative society of any error or misstatement of

which the director or officer becomes aware in a financial statement or other document upon which the auditor or former auditor of the co-operative society has reported or is going to report.

(2) When the auditor or a former auditor of a co-operative society is notified or becomes aware of an error or misstatement in a financial statement upon which he has reported to the co-operative society and in his opinion, the error or misstatement is material, he shall inform each director of the co-operative society accordingly.

(3) When under subsection (2) the auditor or a former auditor of a co-operative society informs the directors of an error or misstatement in a financial statement of the co-operative society, the directors shall—

- (a) prepare and issue revised financial statements; or
- (b) otherwise inform the members and the Registrar of the error or misstatement.

(4) An employee of a co-operative society, member of a committee and agent of the co-operative shall inform a director or an officer of the co-operative society of any error or misstatement in a financial statement or other document of which he is aware.

Immunity of auditor

146. An auditor shall not be liable to any person in an action for defamation based on any act done or not done, or any statement made by him in good faith in connection with any matter he is authorised or required to do under this Act.

Annual, monthly and special returns

147. (1) Not less than ten days, or such shorter period as the Registrar may allow, before the date of its annual general meeting a co-operative society shall—

- (a) file with the Registrar an annual return for the previous year, on the form prescribed by the Registrar; and
- (b) provide the Registrar with a copy of the financial statement to be placed before its members at its next annual general meeting.

(2) Within thirty days of the end of each month, a co-operative society shall file a monthly return with the Registrar in accordance with Regulations.

(3) The Registrar may, by notice in writing, require a co-operative society, director or officer of a co-operative society to file a special return on any subject connected with the business and affairs of the co-operative society including information on risk, prudential reports, quarterly reports of large credit exposures, non-performing loans, investments, assets and liabilities, variance reports.

(4) If the Registrar requests a special return under subsection (3), the Registrar shall specify in the notice a time within which the special return is to be made.

PART 9

RECONSTRUCTION OF CO-OPERATIVE SOCIETIES

Methods of reconstruction

148. (1) The reconstruction of a co-operative society is subject to the approval of the Registrar and may be effected by—

- (a) the amalgamation of one co-operative society with another co-operative society to form a single co-operative society;
- (b) the transfer of the assets and liabilities of one co-operative society to another co-operative society; or
- (c) the division of a co-operative society into two or more co-operative societies.

(2) Sections 151 to 154 shall have effect with respect to the procedure that shall be followed in relation to subsection (1).

Conversion

149. (1) A company registered under the Companies Act or a registered industrial, provident or friendly society under the former Co-operative Societies Act may, by special resolution, determine to convert itself into a co-operative society.

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

(3) A copy of the special resolution referred to in subsection (1) with three copies of the by-laws shall be sent to the Registrar who may, upon receipt thereof, register the co-operative society and issue a certificate of registration in accordance with section 16.

Effect of certificate of registration

150. (1) On the date of the certificate of registration issued under section 149—

- (a) the incorporation or registration under any other enactment of the company or the industrial, provident or friendly society shall cease and shall be cancelled by the proper officer;
- (b) the conversion of the company or the industrial, provident or friendly society shall be effective;
- (c) the property of the company or the industrial, provident or friendly society shall become the property of the co-operative society;
- (d) the co-operative society shall be liable for the obligations of the company or the industrial, provident or friendly society;
- (e) an existing cause of action, claim or liability or prosecution against the company or the industrial, provident or friendly society shall not be affected;
- (f) a civil, criminal or administrative action pending against a converted company or an industrial, provident or friendly society may be continued against the registered co-operative society; and
- (g) a conviction against or a ruling, order or judgment in favour of or against a company or an industrial, provident or friendly society may be enforced by or against the registered co-operative society.

(2) An obligation or penalty arising under any of the matters referred to in subsection (1) for which the former company, or industrial, provident or friendly co-operative society is liable or potentially liable at the date of the certificate of registration issued under section 149 shall have priority as against the property of the registered co-operative society over all other rights or claims against, or liabilities of the registered co-operative society.

Amalgamation of co-operative societies

151. (1) Any two or more co-operative societies may, by a special resolution passed by not less than 3/4 of all the members of each co-operative society present and voting at a special general meeting called for the purpose, amalgamate co-operative society.

(2) If a resolution referred to in subsection (1) is passed, each such co-operative society shall apply to the Registrar for cancellation of its registration and the co-operative societies shall jointly make application for the registration of the amalgamated co-operative society.

(3) The registration of the amalgamated co-operative society shall be sufficient to vest the assets and liabilities of the amalgamating co-operative societies in the amalgamated co-operative society.

Transfer of assets of co-operative societies

152. (1) Any co-operative society may, by special resolution passed by not less than 3/4 of all the members present and voting at a special general meeting called for the purpose, agree to transfer its assets and liabilities to any other co-operative society which has agreed to accept them.

(2) The acceptance of that other co-operative society shall be by a resolution passed by not less than 3/4 of the members of that other co-operative society present and voting at a special general meeting called for the purpose.

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

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

(5) If the vesting of the assets of a co-operative society involves real estate, a copy of the resolution referred to in subsection (1), certified by the Registrar, the resolution shall be filed at the Land Registry.

Claims of objecting creditors

153. Notwithstanding sections 151 and 152, an amalgamation or transfer shall not be effected unless the creditors of the co-operative societies concerned are given three months' written notice of the proposal and have signified that they have no objections.

Division of co-operative society

154. (1) A co-operative society may, by preliminary resolution passed by three-fourths of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more co-operative societies.

(2) In this section "**preliminary resolution**" means a resolution that—

- (a)** contains proposals for the division of the assets and liabilities of the co-operative society among the new co-operative societies into which it is proposed to divide the co-operative society; and
- (b)** specifies the area of operation of, and the members who will constitute, each of the new co-operative societies.

(3) A copy of the preliminary resolution shall be sent to the Registrar and all members and creditors of the co-operative society that is being divided.

(4) At least ten days notice of the preliminary resolution shall be given to any person whose interest will be affected by the division of the co-operative society by publishing a notice in the *Gazette* and—

- (a) not less than two issues of a newspaper published and circulated in Montserrat; or
- (b) in a place or through a medium of communication that is stipulated in the by-laws and is in the opinion of the Board, prominent and accessible to members.

(5) A member of a co-operative society may, notwithstanding any by-law to the contrary, by notice given to the co-operative society within a period of three months from his receipt of the preliminary resolution, state his intention not to become a member of any of the new co-operative societies.

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

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

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

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

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

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

- (a) repayment of the share capital of all the members who have given notice under subsection (5);
- (b) satisfaction of the claims of all the creditors who have given notice under subsection (6); and

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

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

(12) If within such time as the Registrar considers reasonable—

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

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

(c) the claims of the other persons referred to in subsection (11)(c) are not satisfied or secured,

the Registrar may refuse to register the new co-operative societies.

Effect of registration of new co-operative societies

155. The registration of new co-operative societies established under section 154 is sufficient to vest the assets and liabilities of the original co-operative society in the manner specified in the preliminary resolution and confirmed in accordance with section 154(8) and (9).

PART 10

RECEIVERS AND RECEIVER-MANAGERS

Appointment of receiver or receiver-manager

156. (1) If, in the opinion of the Registrar or the High Court, based on the results of an examination undertaken under section 186, it is necessary to appoint a receiver or a receiver-manager to protect the equity of the members, the Registrar or the Court may appoint a receiver or a receiver-manager.

(2) An appeal shall lie to the Court of Appeal against the appointment of a receiver or receiver-manager by the Registrar or the High Court within ten days of the appointment.

Functions of receiver

157. (1) Subject to the rights of secured creditors, a receiver of any property of a co-operative society may—

(a) receive the income from the property and pay the liabilities connected with the property; and

(b) realise the security interest of those on whose behalf the receiver is appointed.

(2) Notwithstanding subsection (1) and subject to any order that the Court may make under section 161, a receiver who is not appointed as manager of a co-operative society shall not carry on the business of the co-operative society.

Functions of receiver-manager

158. (1) If a receiver of a co-operative society is also appointed manager of the co-operative society under section 156, the receiver may carry on any business of the co-operative society to protect the equity of the members.

(2) A receiver or receiver-manager appointed by a Court or the Registrar shall be discharged by the Court or Registrar if in the opinion of the Court or Registrar the equity of the members has been sufficiently protected as to enable the society to be returned to its members.

Cessation of Board's powers

159. If a receiver or receiver-manager is appointed by a Court or the Registrar, no directors of the co-operative society shall exercise the directors' powers that the receiver or receiver-manager is authorised to exercise until the receiver or receiver-manager is discharged.

Duty of receiver or receiver-manager

160. (1) A receiver or receiver-manager appointed by a Court shall act in accordance with any directions of the Court.

(2) A receiver or receiver-manager appointed by the Registrar shall act in accordance with any directions of the Registrar.

(3) A receiver or receiver-manager shall—

- (a) act honestly and in good faith; and
- (b) deal with any property of the co-operative society in his possession or control in a commercially reasonable manner.

Court orders and directions

161. Upon an application by a receiver or a receiver-manager of a co-operative society, whether appointed by the Court or the Registrar, the Court may make any order it thinks fit, on any matter including—

- (a) appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
- (b) determining the notice to be given to any person or dispensing with notice to any person;
- (c) fixing the remuneration of the receiver or receiver-manager;
- (d) requiring the receiver or receiver-manager—

- (i) to make good any default in connection with his custody or management of the property and business of the co-operative society; and
- (ii) to relieve the receiver or receiver-manager from any default on any terms that the Court considers appropriate;
- (e) confirming any act of the receiver or receiver-manager; and
- (f) giving directions on any other matter relating to the duties of the receiver or receiver-manager.

Orders and directions by Registrar

162. (1) If a receiver or a receiver-manager is appointed by the Registrar, the receiver or receiver-manager may apply to the Registrar for directions on any matter relating to his duties.

(2) If the Registrar receives an application under subsection (1), the Registrar may make any order it considers appropriate, including any order similar to an order described in sections 161(c) to (f).

Required actions of receiver

163. A receiver or receiver-manager shall—

- (a) in the case of a receiver or receiver-manager appointed by the Court, immediately notify the Registrar of his appointment or discharge;
- (b) take into his custody and control the property of the co-operative society in accordance with a Court order or an order of the Registrar;
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the co-operative society for the moneys of the co-operative society coming under his control;
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager;
- (e) keep accounts of his administration that he shall cause to be available during usual business hours for inspection by the directors of the co-operative society, the Registrar or any person authorised by the Registrar;
- (f) prepare, at least once in every six-month period after the date of his appointment, financial statements of his administration, as far as is practicable in the form required in section 130;
- (g) on completion of his duties, render a final account of his administration in the form he has adopted for preparation of interim accounts under paragraph (f); and

- (h) file with the Registrar a copy of any financial statement referred to in paragraph (f) and any final account referred to in paragraph (g) within fifteen days of the preparation of the financial statement or rendering of the final account.

PART 11

DISSOLUTION

Dissolution by members

164. (1) Subject to the approval of the Registrar, the members of a co-operative society may authorise the dissolution of the co-operative society.

(2) The Board shall cause a notice of a special meeting of members to be sent in the manner prescribed in section 46 to each member for the purpose of authorising dissolution.

(3) Each member of the co-operative society has the right to vote with respect to dissolution.

(4) For the purpose of subsection (1) dissolution is authorised when the members approve the dissolution by a special resolution.

(5) If the Registrar—

(a) receives notice, in a form satisfactory to it, of an authorisation to dissolve a co-operative society; and

(b) is satisfied that it is in the best interest of the co-operative society and its members,

the Registrar shall approve the dissolution.

(6) The authorisation approved under subsection (4) shall set out—

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

(b) the claims of any creditors;

(c) the number of members; and

(d) the nature and extent of the members' interest in the co-operative society.

(7) Subject to subsection (9), if a co-operative society has an unallocated surplus and the authorisation approved under subsection (4) states that it is not to be paid out at the time of the co-operative society's dissolution, the unallocated surplus shall be paid to one or more trustees who are—

(a) named in the special resolution; or

(b) if not named in the special resolution, appointed by the Registrar.

(8) The trustees named or appointed pursuant to subsection (7) shall—

- (a) deposit the money in a special trust account—
 - (i) in a co-operative society; or
 - (ii) in any financial institution licensed under the Banking Act or any company registered under the Insurance Act; or
- (b) invest the money in—
 - (i) securities issued by the Government;
 - (ii) securities the payment of interest on which is guaranteed by the government; or
 - (iii) any other manner authorised by the Registrar.

(9) If a trust is created under subsection (7), the income and principal of the trust shall be expended within a period of twenty years from the date that the trust was established for any cooperative purpose the Registrar considers fit.

(10) In this section—

- (a) “**interest**” includes the interest of a member in a co-operative society and includes member loans and obligations of any kind that—
 - (i) arise by virtue of the by-laws of the co-operative society; and
 - (ii) are owed by the co-operative society to the members; and
- (b) “**unallocated surplus**” includes any net proceeds from the sale of assets on dissolution of the co-operative society after the liabilities of the co-operative society and the claims of creditors and members have been satisfied.

Notice of dissolution by Registrar

165. (1) When the Registrar approves a special resolution passed under section 164, the Registrar shall, at the expense of the co-operative society, cause a notice of the special resolution to be published in the *Gazette* and—

- (a) once a week for two weeks in a newspaper circulated in Montserrat; or
- (b) in a place or through a medium of communication that is stipulated in the by-laws and is in the opinion of the Board, prominent and accessible to members.

(2) Notwithstanding subsection (1), if the Registrar receives an affidavit from the officers of a co-operative society stating that the co-

operative society has no assets and no liabilities and it is satisfied that it is appropriate, the Registrar may—

- (a) exempt the co-operative society from paying the expenses of publishing a notice under subsection (1); and
- (b) cause, at the Registrar's expense, a notice of the special resolution passed under section 164(1) to be published in the *Gazette*.

(3) The Registrar shall require from a co-operative society, liquidator or trustee appointed by a co-operative society or any other person who is required to provide information, an annual or other return showing—

- (a) the progress of dissolution;
- (b) the distribution of any undistributed surplus or reserve;
- (c) the progress of the administration of a trust established in accordance with this section; and
- (d) any other information that it may require.

Dissolution by Registrar for failure to carry on business

166. (1) If the Registrar has reasonable cause to believe that a co-operative society—

- (a) has not commenced business within twelve months after the date shown on its certificate of registration; or
- (b) has not carried on business for twelve consecutive months,
the Registrar shall send to the secretary of the co-operative society a letter inquiring whether the co-operative society is carrying on business, is in operation or is submitting an annual return.

(2) If the Registrar does not, within one month of the date it sent a letter under subsection (1), receive an answer to the letter, the Registrar shall, within fourteen days after the expiry of the month, send to the secretary of the co-operative society a letter referring to the letter sent under subsection (1) and stating that—

- (a) no answer to that letter has been received by the Registrar; and
- (b) if an answer is not received to the letter sent under this subsection within one month from the date it is sent, a notice will be published in the *Gazette* to strike the name of the co-operative society off the Register and to dissolve the co-operative society.

(3) If the Registrar—

- (a) receives an answer from a co-operative society that it is not carrying on business or is not in operation or will not be submitting an annual return; or
- (b) does not, within one month after the date that the Registrar sent a letter under subsection (2), receive an answer to that letter,

the Registrar shall publish in the Gazette and send to the co-operative society a notice that, at the expiry of one month from the date of that notice, the co-operative society will, unless cause is shown to the contrary, be struck off the register and the co-operative society will be dissolved.

(4) At the expiry of the period referred to in a notice sent under subsection (3), the Registrar shall, unless cause to the contrary is previously shown by the co-operative society—

- (a) if the Registrar is satisfied that the co-operative society has no assets or liabilities, issue a certificate of dissolution in the prescribed form; or
- (b) appoint a liquidator to dissolve the co-operative society.

Dissolution for failure to account for business

167. (1) If a co-operative society fails to provide a copy of the annual financial statements to its members at an annual or special meeting called for that purpose or within a period of twelve months after the close of its financial year, the Registrar—

- (a) may require the directors to call a special meeting of the co-operative society for the purpose of considering the business transacted during the preceding financial year and for the providing to the members and to the Registrar a copy of the annual financial statement; and
- (b) shall, if the Registrar requires a special meeting to be called under paragraph (a), determine a time period within which the special meeting is to be called.

(2) If the directors fail to call a special meeting within the time period set out in subsection (1), the Registrar may call the special meeting—

- (a) to review the financial position of the co-operative society and the members' interests in the co-operative society; and
- (b) to ascertain whether the members wish to continue the business of the co-operative society and to comply with sections 130 and 132.

(3) If—

- (a) a quorum of members is not present at a special meeting called under subsection (2); or
- (b) the members fail to pass a resolution to the effect that the co-operative society is to carry on business and to comply with section 130 and 132,

the Registrar shall notify the directors that, unless sections 130 and 132 are complied with within one month from the date of the notice, the co-operative society will be struck off the register and dissolved.

(4) Notwithstanding subsection (3), the Registrar may extend the period for compliance with sections 130 and 132.

(5) If a co-operative society does not comply with sections 130 and 132 within the period referred to in subsection (3) or set by the Registrar under subsection (4) the Registrar shall—

- (a) if the Registrar is satisfied that the co-operative society has no assets or liabilities, issue a certificate of dissolution in the prescribed form; or
- (b) appoint a liquidator to dissolve the co-operative society.

Dissolution by Court

168. (1) The Registrar or a person who has an economic interest in the co-operative may, after giving the co-operative society three months notice of the proposed application, apply to the Court for an order dissolving a co-operative society, if the co-operative society—

- (a) obtained its registration by fraud or mistake;
- (b) exists for an illegal purpose;
- (c) has wilfully, after notice by the Registrar, violated any of the provisions of this Act, the Regulations or its by-laws;
- (d) is no longer operating in accordance with the co-operative principles set out in section 3; or
- (e) has the number of its members reduced below the minimum number required by this Act for the co-operative society.

(2) If a person who has an economic interest in the co-operative applies under this section, he shall give the Registrar notice of his application and the Registrar shall be entitled to appear and be heard and represented either by a member of staff of the Registrar or by a barrister or solicitor.

(3) If the Court receives an application under this section, the Court may order that the co-operative society be dissolved or liquidated and dissolved under the supervision of the Registrar.

(4) If the Registrar receives an order made under subsection (3), the Registrar shall—

- (a) if the order is to dissolve the co-operative society, issue a certificate of dissolution in the prescribed form; or
- (b) if the order is to liquidate and dissolve the co-operative society under the supervision of the Registrar, publish a notice in the *Gazette*.

Revival of dissolved co-operative society

169. (1) If a co-operative society has been dissolved under this Part, any interested person may apply to the Registrar to have the co-operative society revived by submitting to the Registrar—

- (a) an application for revival in such form as the Registrar may approve; and
- (b) such other information as the Registrar may require.

(2) If the Registrar receives an application for revival under subsection (1) and the Registrar is satisfied that the co-operative society is in compliance with this Act, the Registrar may—

- (a) issue a certificate of revival in the prescribed form and publish notice of the revival in the *Gazette*; and
- (b) impose any conditions on the co-operative society that it considers reasonable with respect to the co-operative society.

(3) A co-operative society is revived on the date shown in the certificate of revival.

(4) If a co-operative society is revived under this section, it—

- (a) shall have all the rights and privileges; and
- (b) shall be liable for the obligations,

that it would have had if it had not been dissolved, subject to any terms that may be imposed by the Registrar and to any rights acquired by any person after its dissolution.

Appointment of liquidator

170. (1) If—

- (a) a co-operative society is to be dissolved under this Part; or
- (b) no liquidator is appointed by the members or the Court,

the Registrar may appoint a liquidator to wind up the affairs of the co-operative society.

(2) Notwithstanding subsection (1) if the Registrar is satisfied that the co-operative society has no assets and liabilities, he may issue a certificate of dissolution in the prescribed form.

Commencement of liquidation

- 171.** The liquidation of a co-operative society commences if—
- (a) a special resolution for dissolution of the co-operative society is approved by the Registrar under section 164;
 - (b) the Registrar appoints a liquidator under section 166 or 167;
 - (c) the Court makes an order to dissolve under section 168; or
 - (d) the registration of a co-operative society is cancelled by the Registrar under section 23 or any other section of this Act.

Cessation of business

- 172.** From the date of the commencement of its liquidation—
- (a) a co-operative society continues in existence, but shall cease to carry on its business except insofar as may be required, in the opinion of the liquidator, for an orderly liquidation; and
 - (b) any transfer of shares, other than a transfer made to or with the approval of the liquidator, and any alteration in the status of the members made after commencement of the liquidation shall be void.

General provisions respecting liquidators

173. (1) If two or more liquidators are appointed, all the provisions in this section with respect to a liquidator apply to all of the liquidators.

(2) On the appointment of a liquidator under this Part, all the powers of the directors vest in the liquidator.

(3) A liquidator may delegate any of the powers vested in him under subsection (2) to the directors or a member.

(4) If the members of a co-operative society appoint a liquidator, they may, at that time or at a subsequent general meeting, pass a resolution giving direction to the liquidator with respect to the disposal of the property of the co-operative society.

(5) If—

(a) the members appoint a liquidator and do not issue any direction under subsection (4); or

(b) a liquidator is not appointed by the members,

the liquidator is subject to a direction, order and instruction of the Registrar with respect to the mode and terms and conditions on which the liquidator may dispose of the whole or any part of the property of the co-operative society.

(6) If a vacancy in the office of liquidator occurs, the Registrar may appoint another person to fill the vacancy.

(7) In all proceedings connected with the co-operative society, the liquidator is to be described as the liquidator of the co-operative society and not by his individual name only.

Duties of liquidator

174. On his appointment, a liquidator shall—

- (a) immediately give notice of his appointment—
 - (i) in the case of a liquidator not appointed by the Registrar, to the Registrar; and
 - (ii) to each claimant and creditor known to the liquidator;
- (b) immediately publish notice of his appointment in the *Gazette* and—
 - (i) once a week for two consecutive weeks in a newspaper circulated in Montserrat; or
 - (ii) in a place or through a medium of communication that is stipulated in the by-laws and is in the opinion of the Board, prominent and accessible to members;
- (c) set out in the notice referred to in paragraphs (a) and (b) a provision requiring any person—
 - (i) indebted to the co-operative society, to render an account and pay to the liquidator at the time and place specified;
 - (ii) possessing property of the co-operative society, to deliver it to the liquidator at the time and place specified; and
 - (iii) having a claim against the co-operative society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;
- (d) take into his custody and control the property of the co-operative society;
- (e) open and maintain a trust account for the monies of the co-operative society;
- (f) maintain separate lists of the members, creditors and other persons having claims against the co-operative society;
- (g) if at any time the liquidator determines that the co-operative society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and

- (h) deliver to the Registrar and the co-operative society, at least once in every twelve-month period after his appointment or more often as the Registrar may require, financial statements of the co-operative society in the form required in section 130 or in any form that the liquidator considers proper or that the Registrar may require.

Powers of liquidator

175. (1) The liquidator may—

- (a) retain attorneys-at-law, accountants, engineers, appraisers and other professional advisors;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the co-operative society;
- (c) carry on the business of the co-operative society as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the co-operative society; or
- (e) do all acts and execute any documents in the name and on behalf of the co-operative society;
- (f) borrow money on the security of the property of the co-operative society;
- (g) settle any claims by or against the co-operative society; and
- (h) do all other things that he considers necessary for the obligation of the co-operative society and distribution of its property.

(2) If a liquidator has reason to believe that a person has in his possession or under his control or has concealed, withheld or misappropriate any property of the co-operative society, he may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(3) If the examination referred to in subsection (2) discloses that a person has concealed, withheld or misappropriate property of the co-operative society, the Court may order that person to restore the property or pay compensation to the liquidator on behalf of the co-operative society.

(4) A liquidator shall purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the co-operative society.

Limitation on liability of liquidator

176. A liquidator shall not be liable if he relies in good faith on—

- (a) financial statements of the co-operative society represented to him—

- (i) by an officer of the co-operative society; or
 - (ii) by the auditor of the co-operative society in a written report that states that the financial statements reflect fairly the financial condition of the co-operative society; or
- (b) an opinion or statement of a barrister or solicitor, accountant, engineer, appraiser or other professional advisor retained by the liquidator.

Cost of liquidation and distribution of assets

177. (1) A liquidator shall pay costs of liquidation out of the property of the co-operative society and shall pay or make adequate provision for all claims against the co-operative society.

(2) After the date specified by the liquidator for presenting particulars of a claim under section 174(c)(iii), the liquidator may distribute all or any part of the assets of the co-operative society among the parties entitled to the assets having regard to the claims of which the liquidator has notice.

(3) The liquidator shall not be liable for any part of the assets of the co-operative society distributed under subsection (2) to any person notice of whose claims the liquidator did not have at the time of distribution.

(4) When distributing the assets of a co-operative society under this section, the liquidator shall pay, in priority to the claims of the creditors of the co-operative society, the wages or salaries of all persons, other than directors, employed by the co-operative society at the time of the commencement of the liquidation or within one month before, not greater than three months' wages or salary, and those persons are entitled to rank as creditors of the co-operative society for any residue of the claims.

Closure of liquidation

178. (1) In the liquidation of a co-operative society, the funds, including the statutory reserves, shall be applied—

- (a) firstly to the cost of liquidation;
- (b) secondly to the discharge of the liabilities of the co-operative society;
- (c) thirdly to the payment of share capital; and
- (d) fourthly, if the by-laws of the co-operative society permit, to the payment of a dividend at a rate not exceeding 10% per annum for any period during which no distribution of profits has been made.

(2) Any surplus remaining after the application of the funds to the purposes specified in subsection (1) may, at the discretion of the Registrar

be used for any purpose the Registrar considers fit in accordance with the co-operative principles set out in section 3.

(3) If the liquidation is closed in accordance with subsection (1), the Registrar shall—

- (a) issue directions with respect to the custody or disposal of the documents and records of the co-operative society; and
- (b) discharge the liquidator.

(4) When the Registrar discharges a liquidator under subsection (3), the Registrar shall issue a certificate of dissolution in the prescribed manner.

(5) The co-operative society shall cease to exist on the date shown in the certificate of dissolution.

Custody of records

179. A person who has been granted custody of the documents and records of a dissolved co-operative society—

- (a) remains liable to produce those documents and records; and
- (b) shall keep those documents and records in accordance with the requirements of the Anti-money Laundering and Terrorist Financing Regulations.

Remuneration of liquidator

180. (1) If there is no agreement or provision fixing the remuneration of a liquidator, the liquidator shall be entitled to a commission based on the net proceeds of the estate of the co-operative society realised after deducting his expenses and disbursements.

(2) The amount of the commission referred to in subsection (1) shall be equal to—

- (a) 5% on the first \$1,000 realised;
- (b) 2.5% on the next \$4,000 realised; and
- (c) 1.25% on any sum greater than \$5,000 realised.

(3) If a liquidator applies to the Registrar, the Registrar may increase the amount of commissions set out in subsection (2).

(4) A liquidator is entitled to any fee or charge for his services in addition to the commission allowed under this section.

Continuation of actions

181. (1) Notwithstanding the dissolution of a co-operative society under this Act—

- (a) a civil, criminal or administrative action or proceeding commenced by or against, the co-operative society before its dissolution may be continued as if the co-operative society had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the co-operative society within two years after its dissolution as if the co-operative society had not been dissolved; and
- (c) any property that would have been available to satisfy any judgment or order if the co-operative society had not been dissolved shall remain available for that purpose.

(2) Service of a document on a co-operative society after its dissolution may be effected by serving the document on a person shown on the records of the Registrar as one of the last directors of the co-operative society.

(3) Notwithstanding the dissolution of a co-operative society, a person to whom any of its property has been distributed is liable to any person claiming under subsection (1) to the extent of the amount received by that person on the distribution with respect to any share of the co-operative society that that person held, and an action to enforce such liability may be brought within two years after the date of dissolution of the co-operative society.

Unknown creditors or members

182. (1) On the dissolution of a co-operative society, the liquidator shall convert into money the portion of the property distributable to a creditor or member who cannot be found after a reasonable investigation and shall deposit the money in a co-operative society or with trustees appointed by the Registrar.

(2) A payment under subsection (1) shall be in satisfaction of a debt or claim of such creditor or member.

(3) If a creditor establishes within three years after the dissolution of a co-operative society that he is entitled to any money paid under subsection (1) to a co-operative society or to trustees appointed by the Registrar, the co-operative society or the trustees shall pay the amount of the claim out of the monies deposited.

(4) If moneys deposited under this section are not distributed within three years after the dissolution of a co-operative society then, subject to the approval of the Registrar, the co-operative society or the trustees appointed by the Registrar shall distribute those monies in accordance with section 178(2) or the by-laws.

Power of Registrar to surcharge

183. (1) If, in the course of the dissolution of a co-operative society it appears that any person who is or has been a director, officer, member of a committee or employee of the co-operative society has misapplied or retained or become liable or accountable for any money or property of the co-operative society or has been guilty of misfeasance or breach of trust in relation to the co-operative society, the Registrar may, on the application of the liquidator or of any creditor or contributor—

- (a) carry out an examination into the conduct of such person; and
- (b) make an order requiring the person to—
 - (i) repay or restore the money or any part thereof with interest at such rate as the Registrar may think just; or
 - (ii) contribute such sum to the assets of the co-operative society by way of compensation in regard to the misapplication, retention, dishonesty or breach of trust as the Registrar may think just.

(2) This section shall apply notwithstanding that the act is one for which the offender may be criminally responsible.

Appeal against surcharge

184. Any person aggrieved by an order of the Registrar made under section 183 may appeal to the Tribunal within twenty one days from the date of such order and the decision of the Tribunal shall be final on any question of fact.

Application of Part 11

185. (1) This part does not apply to a co-operative society that is bankrupt within the meaning of the Bankruptcy Act.

(2) If a co-operative society is at any time found, in proceedings under the Bankruptcy Act to be bankrupt within the meaning of that Act, any proceedings taken under this Part to dissolve or to liquidate and dissolve the co-operative society shall be stayed.

PART 12

EXAMINATIONS AND INVESTIGATIONS

Examinations

186. (1) In addition to the powers of routine inspection under sections 5(4) and 22(1) the Registrar may appoint a person as examiner who shall make an examination of the records and the affairs of the co-operative society.

(2) In its request for an examination under this section, the Registrar may set such limits and conditions on the scope and conduct of the examination as the Registrar considers appropriate; and, in carrying out the examination, the powers of the examiner under the provisions of this section shall be limited accordingly.

(3) An examiner requested by the Registrar to carry out an examination under this section may, on production of the examiner's authorisation to any person concerned, at all reasonable times inspect and take copies of, or extracts from, any books or documents relating to a co-operative society, and for any of those purposes may enter any premises at which any such books or documents are kept.

(4) For the purposes of exercising his powers under subsection (3) to take copies or extracts, an examiner may remove from the premises concerned, for such period and on such conditions, if any, as to facilitate access by officers of the co-operative society, as may be reasonably necessary, to any books or documents referred to in that subsection.

(5) An examiner who is carrying out an examination under this section in relation to a co-operative society may, with the approval of the Registrar, and subject to any limits imposed by that approval, carry out a similar examination in relation to any other body, whether a co-operative society or not, which is or has been at any relevant time been associated with the first-mentioned co-operative society, and for that purpose the examiner may exercise, in relation to any such body, any power conferred by subsections (3) and (4).

(6) If an examination is carried out under this section, the examiner shall make a report of the examination to the Registrar.

(7) If required to do so by notice in writing served by the Registrar at any time or by an examiner in the course of an examination—

- (a) a co-operative society;
- (b) any person who is or has been a director, officer, member of a committee, member, agent or liquidator of a co-operative society; and
- (c) any other person who has in his possession or has the ability to obtain any books or documents relating to a co-operative society,

shall provide the Registrar or the examiner such books, documents or information as may be specified in the notice which relate to the co-operative society and are in his possession or he is able to obtain.

(8) If required to do so by notice in writing served on it by the Registrar or by an examiner, a co-operative society shall provide to the Registrar or the examiner a financial statement or periodic financial statements in such form and containing such information as may be specified in the notice.

(9) If a notice under subsection (7) or (8)—

- (a) requires that any item or information is to be furnished within a period, or a time or place specified in the notice; or
- (b) requires that any information is to be verified by a statutory declaration,

the co-operative society or person on whom the notice is served shall not be regarded as complying with the notice unless he also complies with that requirement.

(10) The Registrar or examiner may take copies of or extracts from any item produced in compliance with a notice under subsection (7) or (8) and if so required by the Registrar or examiner, the person on whom a notice under subsection (7) was served or, in the case of a statement produced in compliance with a notice under subsection (8), a person who is or has been a director, committee member, member, agent or liquidator of the co-operative society shall provide any explanation which may reasonably be required of an item so produced.

(11) If a person on whom a notice is served under subsection (7) does not have in his possession or under his control an item specified in the notice but knows if it is, the person shall not be regarded as complying with the notice unless he states to the best of his knowledge and belief if the item is and, if so required, verifies that information by a statutory declaration.

(12) The production by any person of any item forming part of the books and documents of a co-operative society shall not prejudice any lien which that person claims over that item; but nothing in this section shall compel—

- (a) the production by a solicitor or barrister of any document containing a privileged communication made by or to him in that capacity; or
- (b) the provision of information contained in a privileged communication so made.

(13) A person who contravenes subsection (7) or (8) commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of six months, or to both.

(14) If the Registrar considers it just and so requires by notice in writing, all or any of the expenses incurred by the Registrar in exercising his powers under subsection (7) shall be met, either wholly or to such extent as the Registrar may so require—

- (a) out of the funds of the co-operative society; or
- (b) by the directors or former directors of the co-operative society or any of them,

and any sum which a co-operative society or other person is required to pay by a notice under this subsection shall be recoverable summarily by the Registrar as a civil debt.

(15) Subject to section 226(3), a director, committee member, employee or agent of a co-operative society shall not—

- (a) obstruct any person who is carrying out an examination under this Act; or
- (b) obstruct the examination of a co-operative society undertaken under this Act.

(16) A director, officer, member of a committee, employee or agent of a co-operative society who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$20,000 or to imprisonment for a term of one year, or to both.

Investigations by Registrar

187. (1) If—

- (a) an application is made to the Registrar by the lesser of twenty-five members or 10% of the membership of a co-operative society, each of whom has been a member of the co-operative society throughout the period of twelve months ending on the date of the application; and
- (b) the Registrar is of the opinion that it is necessary to do so in the interests of the orderly and proper regulation of the business of a co-operative society,

the Registrar may appoint one or more investigators to investigate the affairs of the co-operative society.

(2) An application under subsection (1)(a) shall be supported by such evidence as the Registrar may require for the purpose of showing that the applicants—

- (a) have good reason for requiring the investigation to be made; and
- (b) have not been actuated by malicious motives in their application,

and if so required by the Registrar the applicants shall deposit with it, prior to, and as security for the costs of, the investigation such sum as it may reasonably require.

(3) If an investigator appointed under this section to investigate the affairs of a co-operative society thinks it necessary for the purpose of the investigation to investigate also the affairs of any other body, whether a co-operative society or not, which is or has at any relevant time been associated with the principal co-operative society, the investigator may do so with the approval of the Registrar.

(4) A notice of an application under subsection (1)(a) as the Registrar may require shall be given to the co-operative society concerned

and, if applicable, to any other body whose affairs are to be investigated by virtue of subsection (3).

(5) Before appointing an investigator under this section, the Registrar shall, if the Registrar is of the opinion that it would not be prejudicial to the interests of the members or creditors of the co-operative society, notify the co-operative society in writing of the action which the Registrar proposes to take and of the grounds on which the Registrar proposes to take it and, in such case, the Registrar shall have regard to any explanatory statement in writing which may be given by the co-operative society within fourteen days from the receipt of the notification.

(6) In the case of an investigation, the expenses may be defrayed in the first instance by the office of the Registrar, but it shall be entitled to be repaid these expenses—

- (a) if the investigation results from an application under subsection (1)(a), by the applicants, to such extent, if any, as the Registrar may direct;
- (b) in any case, by the co-operative society or the other body, to such extent, if any, as the Registrar may direct; and
- (c) in any case, by a person convicted of an offence in proceedings instituted as a result of the investigation, to such extent, if any, as the Court by which the person was convicted may order,

and a person liable under any of paragraphs (a) to (c) shall be entitled to contributions from any other person liable under the same paragraph according to the amount of their respective liabilities.

(7) If an examination undertaken pursuant to this section reveals substantial irregularities in the business of the co-operative society, the Registrar may choose not to direct any members on whose motion the examination was commenced to defray the expenses.

Investigations by Court

188. (1) A member, the Registrar or any person with an economic interest may apply *ex parte*, or on any notice that the Court may require, to the Court for an order directing an investigation to be made of the co-operative society and any of its member co-operative societies.

(2) On an application under subsection (1), the Court may order an investigation of a co-operative society or of any of its member co-operatives if it appears to the Court that—

- (a) the co-operative society is not fulfilling the purpose stated in its by-laws;
- (b) the co-operative society is not carrying on business in accordance with this Act, the Regulations or the by-laws;

- (c) the co-operative society is not organised or being operated on co-operative principles set out in section 3;
- (d) the business of the co-operative society or any of its member co-operative societies is or has been carried out with intent to defraud any person;
- (e) the business or affairs of the co-operative society or any of its member co-operative societies are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that has unfairly disregarded the interests of a member or of a security holder;
- (f) the co-operative society or any of its member co-operative societies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (g) persons concerned with the formation, business or affairs of the co-operative society or any of its member co-operative societies have acted fraudulently or dishonestly, in connection with the co-operative society.

(3) An applicant for an order under this section is not required to give security for costs.

(4) An *ex parte* application under this section shall be heard in camera.

(5) A person shall not publish anything relating to *ex parte* proceedings conducted under this section other than with the authorisation of the Court or the written consent of the co-operative society being investigated.

Court order

189. In connection with an investigation under section 188(1), the Court may make any order it considers appropriate, including an order—

- (a) to investigate;
- (b) appointing an investigator, who may be an employee of the Registrar, fixing the remuneration of an investigator and replacing an investigator;
- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorising an investigator to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the investigator;

- (f) authorising an investigator to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
- (g) requiring any person to attend a hearing conducted by an investigator and to give evidence on oath;
- (h) giving directives to an investigator or any interested person on any matter arising in the investigation;
- (i) requiring an investigator to make an interim or final report to the Court and to the Registrar;
- (j) determine whether a report of an investigator made under paragraph (i) should be published and, if published, ordering the Registrar to publish the report in whole or in part or to send copies to any person the Court designates;
- (k) requiring an investigator or an examiner appointed under section 186 to discontinue an investigation; and
- (l) requiring the co-operative society or a person who made an application under section 188(1) for an order to pay the costs of the investigation.

Powers of investigator

190. (1) An investigator appointed under section 189(b) shall have the powers set out in the order appointing him.

(2) In addition to the powers set out in the order appointing an investigator, the investigator may provide to, or exchange information and otherwise co-operate with, any public official in Montserrat or elsewhere who—

- (a) is authorised to exercise investigatory powers; and
- (b) is investigating, with respect to the co-operative society, an allegation of improper conduct that is the same as or similar to the conduct described in section 188(2).

Hearing in camera

191. (1) An interested person may apply to the Court for an order that a hearing conducted by an investigator appointed under section 189(b) be heard *in camera* and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an investigator appointed under section 189(b) has a right to be represented by an attorney-at-law.

Incriminating evidence

192. (1) A person shall not be excused from attending and giving evidence and producing documents and records to an investigator appointed under section 189(b) by reason only that the evidence tends to incriminate the person or subject the person to any proceedings or penalty.

(2) Evidence described in subsection (1) shall not be used or received against any person in any proceeding instituted against the person, other than a prosecution for perjury in giving evidence.

Absolute privilege respecting statements

193. (1) An oral or written statement or report made during the course of, or as the result of, an investigation or examination authorised by this Part by an investigator or an examiner, or by any other person acting in accordance with powers conferred by this Part in respect of an investigation or examination, shall have absolute privilege.

(2) Nothing in this Part affects the privilege that exists in respect of a barrister or solicitor and his client.

PART 13

DISPUTES

Settlement of disputes

194. (1) If any dispute that relates to the business of a co-operative society arises—

- (a) among members, former members and persons claiming through members or deceased members;
- (b) between a member, former member or person claiming through a member or a deceased member, and the co-operative society, its Board, or any officer of the co-operative society;
- (c) between the member and the co-operative society arising out of or under any by-law relating to the disposal of the produce of agricultural or animal husbandry, or under any contract made under this Act;
- (d) between the co-operative society and any other co-operative society; or
- (e) between the co-operative society and its Board, committee member or employee,

any party to the dispute may refer it to the Registrar for decision.

(2) The Registrar may, before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation—

- (a) to ascertain the cause;
 - (b) to define the issues; and
 - (c) to bring about a voluntary settlement between the parties to the dispute.
- (3) The Registrar may either hear the dispute or delegate authority to hear the dispute to an employee or an office holder, and make and issue a decision, or it may appoint an arbitrator, who shall be a barrister or solicitor of at least five years standing, to do so.
- (4) For the purposes of hearing any dispute the Registrar or the arbitrator appointed by the Registrar—
- (a) may administer oaths; and
 - (b) may require—
 - (i) the attendance of all parties concerned and witnesses; and
 - (ii) the production of all books, documents and things relating to the dispute.
- (5) The Registrar or the arbitrator may order the expenses of determining any dispute, including fees to a barrister and solicitor, to be paid by the co-operative society or by any of the parties to the dispute.
- (6) A party aggrieved by a decision of the Registrar or an arbitrator may appeal to the Tribunal within such time and in such manner as may be prescribed.
- (7) Notwithstanding anything in this section, a co-operative society may exercise any rights arising by law under any charge, mortgage, bill of sale or other security duly executed in accordance with this Act or any other law without recourse to arbitration.
- (8) For the purposes of subsection (1), a claim by a co-operative society for any debt or demand due to it from a member, former member or the personal representative of a deceased member is a dispute that relates to the business of a co-operative society within the meaning of subsection (1).

Co-operative Societies Appeals Tribunal

- 195.** (1) There shall be a Co-operative Societies Appeals Tribunal which shall consist of three persons, one of whom shall be a barrister or solicitor of at least five years standing.
- (2) The Tribunal shall have jurisdiction to hear appeals against a decision of the Registrar or an arbitrator.
- (3) The Schedule shall have effect with respect to the constitution and procedure of the Tribunal.

(4) The Governor acting on the advice of Cabinet may by regulations made under this Act amend Part 2 of the Schedule, and such regulations shall be subject to affirmative resolution of the Legislative Assembly.

(Amended by Act 9 of 2011)

Case stated on question of law

196. (1) In accordance with the Arbitration Act and notwithstanding anything contained in sections 194 and 195, the Registrar or an arbitrator may, in the course of or on making a decision in a dispute, refer a question of law arising therefrom to the Court, by way of case stated for the opinion of that Court.

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

Enforcement of award and recovery of loans

197. (1) An award by the Registrar or an arbitrator may, by leave of the Court, be enforced in like manner as a judgment or order the same effect, and if leave is so given, judgment may be entered in terms of the award.

(2) If a dispute relates to the recovery of a loan made by a co-operative society to a member of that co-operative society, such a dispute may, notwithstanding section 194, be brought before the Magistrate for the district in which the co-operative society conducts business.

(3) A Magistrate shall have jurisdiction under subsection (2), even though the amount due exceeds the limits of jurisdiction of a Magistrate specified in the Magistrate's Court Act.

PART 14

SPECIALISED CO-OPERATIVE SOCIETIES

Credit Unions

Functions of Registrar, immunity, sanctions and corrective action

198. (1) The Registrar shall administer the system of regulation and supervision of credit unions provided for under this Act with a view to—

- (a) the protection by each credit union of the funds of its members; and
- (b) the maintenance of financial stability and well-being in credit unions generally.

(2) The Registrar shall have power to do anything which, in his opinion, is necessary to facilitate the exercise of its functions or is incidental to or consequential on their exercise, and, in the exercise of any such power the Registrar may consult such other bodies as appear to him to be expert or knowledgeable in matters relating to credit unions.

(3) The registration of a credit union or the imposition of any prudential, supervisory or reporting requirements or conditions by the Registrar shall not constitute a warranty as to the solvency of the credit union to which registration is given and the Registrar shall not be liable in respect of any losses incurred through the insolvency or default of a co-operative society which is registered as a credit union.

(4) If after an examination under section 186 or after an investigation under section 187, or on the receipt of any other information the Registrar is of the opinion, that it is necessary to act in the interest of the orderly and proper regulation of the business of a credit union, in addition to the powers conferred by section 5, the Registrar may—

- (a) place the credit union under administrative supervision; and
- (b) take any other necessary action to correct the non-compliance or unsafe or unsound practice, including:
 - (i) prohibiting the disposal, conveying or encumbering of any of the credit union's assets;
 - (ii) prohibiting the incurring by the credit union of any debt, obligation or liability;
 - (iii) prohibiting the investing of any of the credit union's funds;
 - (iv) prohibiting the withdrawal of any of the credit union's accounts at other financial institutions;
 - (v) suspending the credit union's acquisition of fixed assets;
 - (vi) suspending or restricting the credit union's lending operations; and
 - (vii) increasing the credit union's allocation to reserves.

(5) The credit union shall comply with the requirements of the Registrar under subsection (4) and if the credit union fails to do so, the Registrar may appoint an administrator for the credit union, for a period not exceeding twelve months.

(6) If at any time the Registrar determines that the credit union is not in condition to continue business under the administrator, in the interest of the members, depositors or creditors and in accordance with section 156, the Registrar may appoint a receiver or a receiver-manager for the credit union.

(7) All costs incidental to the period of administrative supervision will constitute an allowable charge against the assets of the credit union and shall be paid as the Registrar may determine.

Restrictions

199. (1) A credit union shall not underwrite insurance or the issue of securities by another person.

(2) Nothing in subsection (1) shall prevent a credit union from requiring insurance for the security of the credit union.

(3) A credit union shall not demand from a potential borrower that—

- (a) any additional services, including appraisal valuations or security, be obtained from a specific provider; or
- (b) the borrower should utilise any other services of the credit union, as a condition of, or in consideration of, obtaining a loan.

(4) Subject to subsection (5), a credit union may only hold real property the aggregate market value of which does not exceed 10% of its total assets.

(5) Notwithstanding subsection (4), the Registrar may, if the Registrar is satisfied that the circumstances require it, grant approval to a credit union to hold real property in excess of the percentage specified in subsection (4).

(6) Subsection (5) shall not apply if the credit union exercises its legal right in respect of any property which is the security for any debt, and in such a case, the property shall not be retained for a period in excess of five years without the permission of the Registrar unless in the meantime the aggregate value of the real property held by the credit union is reduced to below the percentage specified in subsection (4).

(7) Nothing in subsection (4) shall be interpreted as requiring a credit union—

- (a) to dispose of any real property that was acquired before the coming into force of this Act; or
- (b) to terminate any agreement to acquire or hold any real/immovable property if the agreement was entered into before the coming into force of this Act.

(8) Without prejudice to the generality of subsection (1), a credit union may, with the permission of the Registrar, do all other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

Liquid assets

200. (1) A credit union shall at all times keep a proportion of its total assets in liquid form as prescribed in the Regulations as will enable the credit union to meet its liabilities as they arise.

(2) For the purpose of complying with subsection (1) a credit union shall ensure that no less than 15% or such greater percentage as may be specified by the Registrar from time to time, of its members unencumbered deposits and other short term liabilities, are maintained in a liquidity reserve; but nothing in this Act shall be taken to prevent a credit union

keeping liquid assets in addition to those required for complying with subsection (1).

(3) Subject to section 125(1)(b), a credit union shall not capitalise its statutory reserves by way of bonus shares or distribute it by way of dividends.

(4) Notwithstanding section 125(1)(b), whenever the Board of a credit union so recommend to the members and a majority of the members present and voting at a general meeting by resolution so approve—

- (a) the allocation to its statutory reserves may be increased; or
- (b) if its statutory reserves at the end of the financial year in question equals or exceeds 10% of assets, the allocation may be reduced.

Loan loss provisions

201. (1) A credit union shall at least annually evaluate the quality and collectability of the loan portfolio and establish adequate loan loss allowance.

(2) The Registrar may in accordance with the standards prescribed by PEARLS issue guidelines to implement the requirement for an adequate loan loss allowance.

Loan approval

202. (1) A loan made by a credit union shall be approved in accordance with the policies established by the directors before any funds are advanced.

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

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

Security for loans

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

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

Loan limits

204. The limits on the amount of loans made by a credit union shall be in accordance with section 121.

Reporting loans

205. (1) If a credit union is reporting loans, it shall report the loans at their fair value after deducting provision on the balance sheet in its annual financial statements for an adequate loan loss allowance in accordance with section 201.

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

Interest on loans

206. (1) The maximum intervals at which interest on loans made by a credit union are to be paid may be prescribed in the Regulations.

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

(3) If a borrower has not paid the interest on a loan for a period determined in the Regulations, the credit union shall not include that interest in income.

Acceptance of deposits

207. (1) Subject to section 123, a credit union may accept deposits—

- (a)* from members;
- (b)* from other co-operative societies;
- (c)* from government and non-government agencies; and
- (d)* bodies corporate.

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

Credit unions and trusts

208. (1) A credit union is not bound to see to the execution of any trust, whether express, implied or constructive, to which any deposit or share is subject.

(2) If any deposit or share is subject to a trust of which the credit union has notice, the receipt or order—

- (a)* of the trustee in whose name the deposit or share stands; or
- (b)* if the deposit or share stands in the names of two or more trustees, all those trustees or any of them who, under the

document creating the trust, may be entitled to receive the deposit or share,

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

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

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

Consumers Co-operative Societies and Housing Co-operative Societies

Restrictions on directorship

209. (1) Subject to subsection (2), an employee of a consumers' co-operative society or a housing co-operative society shall not be a director of the society.

(2) A society shall provide in its by-laws that none of its elected directors shall be employees.

Relationship with members

210. The relationship between a housing co-operative society and its members is not a relationship between a landlord and his tenants.

By-laws

211. The by-laws of a housing co-operative society shall include, in addition to the matters required by section 13—

- (a) the manner in which each member may be required to provide capital for the purposes of the co-operative society;
- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;

- (d) subject to section 30, the manner of withdrawal by a member and the repayment of a member's interests in the co-operative society; and
- (e) the rules governing any leases of housing units by members to non-members.

Amendment of by-laws

212. If the by-laws of a co-operative society provide that it is a housing co-operative society or that this Part applies to the co-operative society, the co-operative society may not repeal or amend that provision of the by-laws without the consent of the Registrar.

No dividend on share capital

213. If a housing co-operative society has a share capital the co-operative society shall not pay any dividend on the share capital to its members.

Right to possession terminated

214. (1) If a person's membership in a housing co-operative society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the co-operative society is terminated.

(2) If a person's membership in a housing co-operative society is terminated and the member does not give up possession of the housing unit he occupies, the housing co-operative society may apply to the Court to recover possession or to recover any arrears of housing charges.

Abandoned goods

215. (1) If a member of a housing co-operative society—

- (a) has his membership terminated or has vacated or abandoned the housing unit formerly occupied by him; and
- (b) has left property in the housing unit,

the co-operative society may apply to the Magistrate's Court for an order authorising it to remove the property from the housing unit and sell or otherwise dispose of it.

(2) The Magistrate may make an order under subsection (1) if the Magistrate is satisfied that the housing co-operative society has made a reasonable effort to locate the former member.

(3) If a housing co-operative society sells or otherwise disposes of property under an order made under subsection (2), it shall pay into the Magistrate's Court, to the credit of the former member, any remaining proceeds of the disposition after deducting—

- (a) any amount with respect to costs incurred by it relating to the disposition that it would be authorised to retain if the

property were goods sold under distress for housing charges;
and

(b) any arrears of housing charges and damages that the Magistrate allows.

(4) If a former member does not claim the remaining proceeds described in subsection (3) within three months after the date the money was paid into the Magistrate's Court, the money shall be paid into the Consolidated Fund.

(5) If a housing co-operative society removes, sells or otherwise disposes of property under an order made under subsection (2), the housing co-operative society is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Industrial Co-operative Societies

Membership

216. (1) In an industrial co-operative society, 75% of all employees shall be members of the co-operative society.

(2) An industrial co-operative society shall not subcontract out more than 50% of its work without the consent of the Registrar.

By-laws

217. In addition to the matters required to be set out in the by-laws under section 13, the by-laws of an industrial co-operative society shall include—

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day to day work of the co-operative society; and
- (d) allocation of bonus among members.

Restriction on registration

218. An industrial co-operative society shall not be registered if the acquisition of goods for sale to the public is one of its principal objects stated in its by-laws.

Bonus based on labour

219. When allocating among creditors or paying a bonus to the members, the directors of an industrial co-operative society may take into account the labour contribution of each member.

Employees may not be directors

220. Directors of an industrial society shall not be employees of the society.

PART 15

APEX BODY

Establishment and constitution of apex body

221. Co-operative societies may establish an apex body which shall be composed of such member representatives of the majority of co-operative societies which may exist in Montserrat.

Functions

222. The apex body shall be a co-operative society under this Act and shall coordinate, assist and promote activities for the development, growth and expansion of all co-operative societies and shall perform representational and other functions as may be determined by its constituent members, including—

- (a) assisting with the formation and readiness for registration of viable co-operative societies;
- (b) the initiation and encouragement of capacity development activities beneficial to co-operative societies;
- (c) liaison and coordination with all co-operative societies;
- (d) stimulation of community awareness and public confidence; and
- (e) representation of the interests of the co-operative sector.

Officers

223. (1) The officers of the apex body shall be elected at the first meeting of that body and shall hold office for a period of one year and thereafter the election of such officers shall be in accordance with the by-laws of the apex body.

(2) The apex body shall regulate its own procedure and may establish its own central credit union or central co-operative society in conjunction with other apex bodies and co-operative societies to provide specialised services and facilities to members.

Consultation by Registrar

224. The Registrar shall, from time to time, consult the apex body or a central credit union or central co-operative society with respect to matters relating to the development of co-operative societies.

PART 16

OFFENCES

Falsely obtaining property of co-operative society

225. (1) A person shall not—

- (a) obtain possession of any property or the grant of a loan from a co-operative society by false representation or other corrupt means;
- (b) wrongfully withhold or misapply any property belonging to or loan from a co-operate society; or
- (c) wilfully apply any part of property belonging to or loan from a co-operate society for purposes other than those directed or expressed in the by-laws of the co-operative society or authorised in this Act or the Regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months, or to both; or
- (b) on conviction on indictment to a fine of \$20,000 or to imprisonment for a term of two years or to both.

(3) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered—

- (a) to deliver up any property or repay any sum of money to which the proceedings relate; and
- (b) pay the cost of the proceedings.

Failure to comply

226. (1) A person shall not—

- (a) fail without reasonable cause or wilfully neglect or refuse to comply with a requirement of this Act or the Regulations; or
- (b) purporting to comply with a requirement for information under this Act, provide information which the person knows to be false.

(2) A person shall not wilfully or without reasonable cause disobey any summons, order or direction lawfully issued under this Act or the Regulations.

(3) A person shall not knowingly alter, destroy, mutilate, conceal, cover or falsify or makes a false entry in any record or document of or belonging to a co-operative society with intent to impede, disrupt or influence an investigation or the proper administration of any matter.

(4) An officer or member of a co-operative society shall not wilfully contravene the by-laws of the co-operative society in relation to his duties or functions as such officer or member.

(5) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable—

- (a) on summary conviction to a fine of \$10,000, imprisonment for a term of one year or both; or
- (b) on conviction on indictment to a fine of \$20,000 imprisonment for a term of two years or both.

Dealing in property subject to charge

227. (1) A person shall not—

- (a) fraudulently remove any property comprised in a charge created in favour of a co-operative society from the place where such property was situated at the time of the execution of the charge; or
- (b) knowingly dispose of, or deal with or attempt to dispose of or deal with such property without first obtaining in writing leave of the co-operative society.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months or to both.

(3) The Court may in addition to any penalty imposed on a person under subsection (1), require that person to repay such amount of the loan with interest as has not been repaid at the date of the conviction and the payment of that amount shall discharge the liability of the borrower to repay the loan.

Offences with respect to reports

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

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

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction in the case of an individual, to a fine of \$5,000 or to imprisonment for a term of six months, or to both; or in the case of a person other than an individual, to a fine of \$10,000.

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

(4) A director, officer, employee or agent of a co-operative society shall not—

- (a) obstruct any person who is carrying out an examination under section 186; or
- (b) obstruct the examination of a co-operative society undertaken under section 186.

(5) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or imprisonment for a term of six months or to both, or on conviction on indictment to a fine of \$20,000 or imprisonment for a term of two years or to both.

Contravention of the Act and Regulations

229. (1) A person shall not—

- (a) fail to give any notice or fail to send any return or document that is required for the purpose of this Act; or
- (b) fail to hold an annual or special general meeting within the stipulated or extended time in conformity with sections 42, 43 and 44.

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

- (a) in the case of a first offence to a fine of \$5,000;
- (b) in the case of a subsequent offence to a fine of \$10,000 or to imprisonment for a term of six months.

(3) If a body corporate contravenes this Act or the Regulations and the contravention is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in such capacity,
- he, as well as the body corporate, shall commit the offence and be liable to be proceeded against and punished accordingly.

(4) For the purposes of subsection (2), “**director**”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

(5) The Regulations may create an offence punishable on summary conviction by a fine of \$20,000 or imprisonment for a term of two years or by both.

Use of words “credit union” and “co-operative”

230. (1) A person shall not in doing business in Montserrat—

- (a) use the words “**credit union**” or “**co-operative**” or any abbreviation or derivation thereof as part of the name of the business or with respect to goods, wares, merchandise or services or the person’s method of conducting business; or
- (b) hold himself or his business to be a registered co-operative society;

unless the person or his business is registered under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of six months or to both.

Court order to comply

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

Limitation

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

Preservation of civil remedy

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

PART 17

MISCELLANEOUS

Interpretation

234. In this Part—

“**duplicate originals**” means the two copies of the by-laws or statements required in section 235;

“**statement**” means a special resolution stating an intent to dissolve referred to in section 164.

Execution and filing

235. (1) If this Act requires that by-laws or a statement relating to a co-operative society shall be sent to the Registrar, unless otherwise specifically provided, the co-operative society shall send three copies of the by-laws or statement signed by a director or an officer of the co-operative society.

(2) Subject to the other provisions of this Act, if the Registrar receives duplicate originals of any by-laws or statement under subsection (1) and they are accompanied by any other required documents and the prescribed fees, the Registrar shall—

- (a) endorse on each of the duplicate originals the word “Registered” and the date of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the by-laws or statements;
- (c) file a copy of the certificate and attached by-laws or statement;
- (d) send to the co-operative society the original certificate and attached by-laws or statement; and
- (e) publish in the *Gazette* notice of the issue of the certificate.

(3) The Registrar may date a certificate referred to in subsection (2) as of the day it receives the by-laws or statement issued under which the certificate is issued or as of any later day specified by the person who signed the by-laws or statement.

(4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically produced.

Waiver of notice

236. If a notice or document is required by this Act or the Regulations to be sent, the sending of the notice or document may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive the notice or document.

Certificate of co-operative society

237. (1) A director or officer of a co-operative society may—

- (a) sign a certificate stating any fact set out in; or
- (b) certify a copy of the whole or any part of,

the by-laws, or any other contract to which the co-operative society is party or the minutes of a meeting of the directors, a committee of directors or the members.

(2) A certificate or certified copy described in subsection (1) is admissible in evidence as *prima facie* proof of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certification.

Documents

238. (1) If a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photo-static or photographic copy of the notice or document.

(2) A person is not affected by, or presumed to have notice or knowledge of, the contents of a document concerning a co-operative society by reason only that the document has been filed with the Registrar or is available for inspection at any office of the co-operative society.

Alteration

239. If the Registrar is authorised to do so by the person who sent a notice or document or his representative, the Registrar may alter the notice or document, but it may not alter an affidavit or statutory declaration.

Rectification and correction

240. (1) If there is an error in the by-laws, a notice, a certificate or any other document, the directors or members shall on the request of the Registrar—

- (a) pass any necessary resolutions;
- (b) send to the Registrar the relevant documents required to comply with this Act; and
- (c) take any other steps that the Registrar may reasonably require,

in order that the Registrar may correct the by-laws, notice, certificate or document.

(2) Before making a correction under subsection (1), the Registrar shall be satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.

(3) The Registrar may, at the request of a co-operative society or of any other interested person, accept a corrected version of any of the documents referred to in subsection (1) if—

- (a) the correction is approved by the directors of the co-operative society; and
- (b) the Registrar is satisfied that the correction would not prejudice any of the members or creditors of the co-operative society.

- (4) If in the view of—
- (a) the Registrar;
 - (b) the co-operative society; or
 - (c) any interested person,

a correction to any of the documents referred to in subsection (1) above would prejudice a member or a creditor of the co-operative society, the Registrar, the co-operative society or the person may apply to the Court for an order that the document be corrected and for an order determining the rights of the members or creditors.

(5) An applicant under subsection (4) shall give the Registrar notice of the application, and the Registrar shall be entitled to appear and to be heard and represented by a member of the staff of the Registrar or by a barrister or solicitor.

(6) A corrected document shall bear the date of document it replaces.

(7) If a corrected certificate materially amends the terms of the original certificate, the Registrar shall without delay give notice of the correction in the *Gazette* and in a newspaper published and circulated in Montserrat.

- (8) The Registrar may on its own initiative correct any—
- (a) linguistic error;
 - (b) error of transcription;
 - (c) clerical error; or
 - (d) mistake if the error is made by the Registrar or if the error is not substantive in nature.

Exemption from stamp duty and other taxes

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

(2) Notwithstanding the provisions of any other law in force in Montserrat, a co-operative society shall be exempt from the payment of income tax, corporation tax and any other tax on the incomes of such co-operative society.

(3) Notwithstanding the provisions of any other law in force in Montserrat providing for the payment of customs duties, consumption taxes, excise taxes, environmental levy or customs service charge, the Governor acting on the advice of Cabinet may by Order published in the *Gazette*, exempt a society registered pursuant to this Act from liability to

customs duties, consumption taxes, excise taxes, environmental levy or customs service charge on goods imported by the society.

(Amended by Act 9 of 2011)

Limitation jurisdiction

242. Except as is expressly provided in this Act, a civil court shall not have any jurisdiction in respect of any matter concerned with the dissolution of a co-operative society under this Act.

Proof of entry in books and other documents

243. (1) A copy of any entry in a book or other document that is required to be kept by this Act shall, if certified by the Registrar be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) An officer of a co-operative society shall not, in any legal proceedings to which the co-operative society is not a party, be compelled to produce any of the co-operative society's books, the content of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

Immunity of Registrar and staff

244. The Registrar or any other person exercising a function under this Act, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Act or under the Regulations unless it is shown that the act or omission was in bad faith.

Abandoned property

245. (1) Subject to subsection (2), if there has been no activity relating to the property specified in paragraphs (a) and (b) for a period of fifteen years except for the posting of interest and dividends the property specified in paragraphs (a) and (b) which are held or owing by a co-operative society shall be presumed to be abandoned—

- (a) any general deposit, demand, savings or matured time deposit made in Montserrat with a credit union, together with any interest or dividend, but excluding any lawful charges thereon;
- (b) any funds paid in Montserrat toward the purchase of shares or other interests in a credit union, together with any interest or dividend, but excluding any lawful charges thereon if there has been no activity for one year.

(2) The property specified in subsection (1) (a) or (b) shall not be presumed abandoned unless correspondence by the credit union has been issued to the owner's last known address at least once every three years reminding the owner that if no activity is evidenced for a period of fifteen years the property is deemed to be abandoned.

(3) The property specified in subsection (1) (a) or (b) shall not be presumed abandoned if the owner has, within fifteen years of the establishment of the account—

- (a) increased or decreased the amount of the deposit or funds;
- (b) presented the passbook for the crediting of interest or dividends;
- (c) corresponded in writing with the credit union concerning the property; or
- (d) otherwise indicated an interest in the property.

(4) If any content of a safety deposit box on which the lease or rental has expired and concerning which notice of the intention of the credit union to deliver the contents thereof into the custody of the Minister responsible for finance has been sent by registered letter to the last known address of the lessee and to which the lessee has failed to respond within one year the contents shall be deemed to be abandoned and shall be paid into the Consolidated Fund.

Regulations

246. (1) For the purpose of carrying out this Act, the Governor acting on the advice of Cabinet may make Regulations—

- (a) requiring the payment of and prescribing the amount of any fee with respect to—
 - (i) the filing, examination or copying of any document; or
 - (ii) any action that the Registrar is required or authorised to take under this Act;
- (b) prescribing the procedure for appeals to the Registrar;
- (c) prescribing business in which co-operative societies or any class of co-operative societies may not engage without the prior approval of the Registrar;
- (d) exempting any co-operative society or class of co-operative societies from any provision of this Act;
- (e) prescribing any other matter or thing required or authorised to be prescribed by this Act; and

- (f) generally for giving effect to and for the efficient operation of the Act.

(Amended by Act 9 of 2011)

(2) Regulations under this Act may—

- (a) make different provision in relation to different cases or circumstances;
- (b) apply in respect of particular persons or particular cases or particular classes of persons or particular classes of cases, and define a class by reference to any circumstances whatsoever; and
- (c) contain such transitional, consequential, incidental or supplementary provisions as appear to the Minister to be necessary or expedient for the purposes of the Regulations.

PART 18

TRANSITIONAL

Interpretation

247. In this Part “**the former Act**” means the Co-operative Societies Act that was in force immediately before the coming into force of this Act.

Existing directors and officers

248. (1) The directors and officers of co-operative societies in existence on the coming into force of this Act shall continue to hold office in accordance with the former Act and the by-laws of the co-operative society.

(2) If new directors of a co-operative society are to be elected after the coming into force of this Act, such directors shall be elected in accordance with this Act.

Co-operative societies and acts done under the former Act

249. All co-operative societies which prior to the coming into force of this Act were duly registered or deemed to be registered under the former Act shall be taken to be registered under this Act, and—

- (a) the by-laws of a co-operative society, including any amendments of those by-laws, as registered under the former Act, shall be taken as if registered under this Act;
- (b) a register kept in accordance with the requirements of the former Act shall be taken to be part of the corresponding register to be kept under this Act;

- (c) a document referring to a provision of the former Act shall be construed as referring to the corresponding provision of this Act;
- (d) all orders, directions, appointments and other acts lawfully made or done under a provision of the former Act and in force immediately before the coming into force of this Act shall be taken to have been made or done under the corresponding provision of this Act and shall continue to have effect accordingly; and
- (e) if a co-operative society is being dissolved or liquidated under the former Act, the former Act shall continue to apply to that co-operative society and its dissolution or liquidation.

Regulations, rules and by-laws

250. Regulations, rules and by-laws made under the former Act remain in force and are considered to have been made under this Act, in so far as they are not inconsistent with this Act, until they are repealed or replaced by other regulations, rules or by-laws made under this Act.

SCHEDULE*(Section 195)***CONSTITUTION AND PROCEDURE OF THE
CO-OPERATIVE SOCIETIES APPEALS TRIBUNAL****PART I****CONSTITUTION****Membership**

1. The Co-operative Societies Appeals Tribunal shall consist of 3 persons, one of whom shall be a barrister or solicitor of at least fifteen years standing who shall be the Chairperson of the Tribunal.

Appointment

2. The members of the Tribunal shall be appointed by the Minister, after consultation with the apex body, if established, for a period of not more than three years and shall be eligible for re-appointment.

Resignation

3. A member may at any time resign his membership by notice in writing to the Minister.

Inability

4. (1) If the Minister is satisfied that a member—

(a) has been incapacitated by physical or mental illness; or

(b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Gazette*, declare the office of the member to be vacant and thereupon, the office shall become vacant.

(2) In case of the temporary absence or inability of a member to act, the Minister may appoint a suitable person to act in that member's place.

Publication

5. The Minister shall publish in the *Gazette* notice of the appointment and cessation of appointment of a member.

Remuneration

6. The members of the Tribunal shall receive such remuneration as the Minister may prescribe.

Validity of proceedings

7. The validity of any proceedings of the Tribunal shall not be affected by any vacancy among the members or any defect in the appointment of a member.

Rules

8. Subject to this Schedule, the Tribunal shall regulate its own procedure and may make rules for that purpose.

PART 2

PROCEDURE

Initial Procedure

1. (1) An appeal to the Tribunal shall be by notice in writing, and sent or delivered to the chairperson of the Tribunal.

(2) On receipt of a notice of appeal, the chairperson shall send a copy thereof to the other members of the Tribunal.

(3) The chairperson of the Tribunal may appoint a secretary and such other officers as he thinks fit for the purposes of the appeal.

Statements to be provided

2. (1) The appellant shall, within fourteen days of the lodging of the notice of appeal, provide to the chairperson of the Tribunal a written statement setting out the facts and grounds on which the appeal is based and a copy of such statement shall be forwarded by the chairperson of the Tribunal to the Registrar and, if the appeal is against a decision of an arbitrator, to the arbitrator, and, if the appellant is not a co-operative society, to the co-operative society of which the appellant is a member, and if the appeal is against the decision of the Registrar or an arbitrator in a dispute, to any other party to the dispute.

(2) A person or co-operative society to whom a copy of the appellant's statement has been provided shall, within fourteen days of the receipt by him of the statement, submit to the chairperson of the Tribunal a written response to the statement, and a copy of such response shall be sent by the chairperson of the Tribunal to the appellant and to any other person interested in the appeal of whom he has notice.

(3) The chairperson shall send copies of all statements and responses to the other members of the Tribunal as soon as he or she receives them.

Further particulars

3. On application by any person interested in the appeal to whom a copy of the written statement of the appellant or of the response has been sent, or in any case where the chairperson of the Tribunal considers it necessary to do so for the proper resolution of the appeal, the chairperson may require the appellant or any other person to provide him with further particulars in writing within such time as the chairperson may direct and the chairperson, on receipt of such particulars shall provide copies of

such particulars to the other interested parties and to the other members of the Tribunal.

Notice of hearing

4. The chairperson of the Tribunal shall, in consultation with the other members of the Tribunal, fix a date and place for the hearing of the appeal and shall give not less than seven days' notice thereof to the appellant, the Registrar and any other interested party.

Procedure at hearing

5. (1) At a hearing before the Tribunal, the appellant, the Registrar and any other interested party shall be entitled to appear and to be heard and represented by a barrister or solicitor or, in the case of the Registrar, by a member of the Registrar's staff.

(2) The Tribunal may admit any duly authenticated written statement or other material as *prima facie* evidence of any fact or facts in any case in which it thinks it just and proper so to do.

(3) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the enquiry.

(4) The Tribunal may require any party to the enquiry or any witness in the proceedings to give evidence on oath and, for that purpose, the chairperson of the Tribunal shall have power to administer an oath.

(5) If, after notice of a hearing has been duly given, the appellant, the Registrar or any other interested party fails to appear at the hearing, the Tribunal may proceed with its enquiry into the appeal notwithstanding the absence of all or any of them, or may give such directions with a view to the determination of the appeal as the Tribunal thinks just and proper.

(6) Proceedings of the Tribunal shall be held in public.

Decision of Tribunal

6. (1) The decision on any matter of the majority of the Tribunal shall be the decision of the Tribunal, and the decision of the Tribunal shall be recorded in writing and signed by the chairperson of the Tribunal, who may correct in any decision any clerical mistake or error arising from an accidental slip or omission.

(2) A copy of the decision, signed as aforesaid, shall be sent by the chairperson of the Tribunal, as soon as may be practicable, to the appellant, the Registrar and any other interested party.

(3) The Tribunal may, on the application of any person, award costs to any party to an appeal in such amount as the Tribunal shall assess at the hearing.

General provision as to procedure

7. Save as otherwise expressly provided by this Act, the procedure at any hearing before the Tribunal shall be such as the Tribunal may determine.

Proof of decisions of the Tribunal

8. The production in any proceedings in any court of a document purporting to be certified by the secretary as a copy of a decision of the Tribunal shall, unless the contrary is proved, be sufficient evidence of the document and the facts stated therein.

CO-OPERATIVE SOCIETIES REGULATIONS

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CO-OPERATIVE SOCIETIES REGULATIONS – SECTION 246

(S.R.O. 44/2006)

Commencement

[5 October 2006]

Short title

1. These Regulations may be cited as the Co-operative Societies Regulations.

Definition

2. In these Regulations—

“**Act**” means the Co-operative Societies Act;

“**association**” means a group of people organised for some common purpose but without corporate personality;

“**bank**” means a bank registered under the Banking Act;

“**corporation**” means a body corporate under law;

“**form**” means a prescribed form as set out in the First Schedule;

“**society**” means a registered primary, secondary or tertiary society as defined in regulation 21(1);

“**Unincorporated organisation**” means a body of persons not incorporated under law.

Forms

3. The forms set out in the First Schedule are to be used for the purposes of the Act and these Regulations.

Fees

4. The Fees payable under the Act and Regulations are specified in the Second Schedule.

Filling out of Document

5. (1) Where an item required to be disclosed in a document does not apply, the phrase “**not applicable**” or the abbreviation “**N/A**” should be used in the space provided in the document.

- (2) Where—

- (a) any provision required to be set out in a document is too long to be set out in the space provided in the document; or

- (b) an agreement or other document is to be incorporated by reference and to be part of the document, it may be incorporated in the form.

(3) A provision, agreement or other document referred to in paragraph (2) may be incorporated by—

- (a) setting out that the annexed schedule (number or name) is incorporated in the form or words to this effect, in the space provided on the document; and
- (b) annexing the provision, agreement or other document to the form; or
- (c) if the form is being completed on a word processor or computer, the provision may be completed through the expansion of the space as is necessary to enter the provision but all pages of the form being completed must be of the same size.

(4) A separate annex or schedule is required with respect to each item that is incorporated by reference in a document pursuant to paragraphs (2) and (3).

Dividend rate

6. For the purposes of section 129(1) of the Act, no society shall pay a dividend on its shares at a rate that is greater than 2% above the savings rate set by the Eastern Caribbean Central Bank.

Transfer of Shares

7. (1) The Registrar may determine the forms to be used for the transfer of shares.

(2) No transfer of a share shall be registered, without the approval of the Board, if made by a member who is indebted to the society, and, until the transfer of share is registered, no right shall be acquired against the society by the transferee nor shall any claim of the society upon the transferor be affected thereby.

Minimum amount of fidelity bond

8. (1) For the purposes of section 93 of the Act, a blanket security or fidelity bond shall be given by all officers including the President, Vice-President, Secretary, Treasurer, Secretary-Treasurer, Manager and any other authorised signing officer, and every employee of the society.

(2) In respect of the credit union the minimum amount of security or fidelity bond required is \$50,000.

(3) In respect of other co-operative societies the minimum amount of the security or fidelity bond is—

- (a) \$1,000 in the case of a society with sales or revenue not exceeding \$25,000 per year;
- (b) \$2,000 in the case of a society with sales or revenue greater than \$25,000 but not exceeding \$100,000 per year; and
- (c) \$5,000 in the case of a society with sales or revenue greater than \$100,000 per year.

Annual financial statements and special returns

9. (1) The comparative financial statements required pursuant to section 130 of the Act must include—

- (a) a balance sheet;
- (b) a statement of income;
- (c) a statement of retained earnings;
- (d) a statement of changes in financial position; and
- (e) a statement of receipts and payments;
- (f) any other statements or reports that the Registrar may require.

(2) Financial statements need not be designated by the names set out in paragraphs (1)(a) to (d).

(3) Additional periodic performance returns, as required by the Registrar under section 147(3) of the Act, shall also be provided in an accurate and timely manner as required by the Registrar, so that the Department's records are up-to-date and reliable and so that the Registrar and Financial Services Commission are able to monitor the financial position.

Auditor's report

10. For the purposes of section 143 of the Act, the Auditor of a society shall indicate in his report whether or not the financial statements contained in his report—

- (a) were prepared in accordance with generally accepted accounting principles or international standards; and
- (b) are presented on a basis consistent with that of the preceding year,

if they are not, an explanation as to why either or both of (a) and (b) are not met.

Standard of financial statements and auditor's report

11. The financial statements referred to in section 130 of the Act and the auditor's report referred to in section 143 of the Act must, except as otherwise provided by these Regulations, be prepared in accordance with internationally accepted standards.

Election of directors

12. (1) This regulation applies for the purposes of section 53 of the Act.

(2) Before accepting the nomination of any person, the Chairman of a meeting called to elect directors, shall satisfy himself that the person to be nominated—

- (a) is qualified pursuant to the Act and the by-laws of the society to be director; and
- (b) has consented to the nomination.

(3) Where the number of candidates nominated does not exceed the number of directors to be elected, the Chairman of the meeting called to elect directors shall declare all the candidates elected.

(4) Subject to paragraph (7), only one ballot is to be taken and the number of candidates equal to the number of directors to be elected receiving the highest number of votes are to be declared elected.

(5) Where candidates are to be elected for varying terms, the candidates receiving the highest number of votes cast are to be declared elected for the longest or the longer terms, as the case may be.

(6) For the purpose of these Regulations a term shall not exceed three years.

(7) Where 2 or more candidates receive an equal number of votes, the members present at the meeting may by resolution provide that a second ballot be cast to break the tie.

(8) Where the meeting does not decide to hold a second ballot pursuant to paragraph (7), the Chairman of the meeting called to elect directors shall draw lots, and the candidate whose lot is drawn on his ballot, is to be declared elected.

(9) Where a member votes for more than the number of directors to be elected his ballot is not to be counted.

(10) Where a registered society submits a by-law to the Registrar that provides for a method of electing directors other than at a general meeting of members and the Registrar is satisfied that the by-law complies with paragraphs (4), (5), (6), (7), (8) and (9), the Registrar may approve the by-law and, on and after the date of that approval, the directors of the society shall be elected in the manner provided for in the by-law.

(11) A society shall not include in any by-law governing the manner of electing its directors, any provision that prohibits its members from nominating as a candidate for election as director any member who—

- (a) is qualified to be a director; and
- (b) consents to the nomination.

Meeting of Directors

13. The directors of a registered society shall hold at least one meeting every month.

Appointment of Secretary and Treasurer

14. (1) This regulation applies for the purposes of section 54 of the Act.

(2) The Board of Directors of a society shall—

- (a) appoint a secretary and a treasurer to the society, and no secretary or treasurer shall hold office for more than three consecutive terms; or
- (b) have power to fix the remuneration for their service unless the secretary and treasurer so appointed are members of the Board, in which case the secretary and treasurer must not attend the meeting at which their remuneration is fixed or affirmed and they must abstain from voting on their remuneration.

(3) No appointment made or remuneration fixed by the Board in accordance with paragraph (2) shall be valid, effective, payable or recoverable until notice of the appointment and remuneration are submitted to the Registrar.

Duties of Secretary and Treasurer

15. (1) The Secretary of a society shall—

- (a) keep the minutes of any meeting of the society or Board;
- (b) ensure that all records, books, papers and other documents of the society are kept in a safe place in the office of the society;
- (c) conduct any correspondence on behalf of the society except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out the duties of their jobs;
- (d) attend all meetings of the society and the Board and have with him the necessary minutes and record books and correspondence relative to the business of the society;
- (e) issue notices for all meetings of the Board and general membership of the society in accordance with the Regulations and the by-laws;
- (f) sign and execute, jointly with the President, all deeds and conveyances of real or personal property, all fixed deposits or share certificates and such other documents as the Board may specify;
- (g) review the minutes of all committees of the society; and
- (h) perform such other duties as are prescribed by the by-laws or authorised by the Board.

(2) The Treasurer of the society shall—

- (a) receive all monies due and payable to the society and issue receipts for the same except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out the duties of their jobs;
- (b) deposit all monies received in the name of the society in such bank or depository as specified by the Board;
- (c) sign all cheques, notes, bills of exchange and other documents necessary to effect the business of the society;
- (d) keep a just and true record of all financial transactions effected by the society in the books provided for that purpose;
- (e) keep charge and control of all cash, securities, books and other documents and vouchers for all payments made and receipts issued on behalf of the society;
- (f) reconcile or cause to be reconciled at least once per month the members' ledger or accounts with the relative general ledger control accounts;

- (g) reconcile or cause to be reconciled at least monthly all passbooks or statements received from depositors with the relevant control accounts in the general ledger;
- (h) cause all members' ledgers and all members' passbooks to be reconciled at least once per year;
- (i) produce a current statement of the society's monies as the Board or Registrar may demand;
- (j) prepare the annual statement of account, the balance sheet, the monthly financial statements and other statements as the Board may request;
- (k) make payments as authorised by the Board and obtain receipts for the same except in the case of a credit union where the Board may delegate such powers to other members of staff so that they may carry out their duties of their jobs; and
- (l) perform such other duties as the Board may prescribe.

(3) The duties of the Secretary and Treasurer may be modified or altered in keeping with the allotment of duties assigned by the Board to the manager and other employees of the society.

Supervisory and Compliance Committee

16. For the purposes of sections 65, 66, 68 to 71 of the Act and subject to the Act and by-laws, the Supervisory and Compliance Committee shall—

- (a) meet after the first annual general meeting and after each annual general meeting of the society, as soon as is reasonable, to organize for the current year;
- (b) appraise the policies and operating procedures of the society and make recommendations to the Board and to the Credit Committee;
- (c) attest to the monthly and annual returns filed in compliance with sections 130 and 147 of the Act;
- (d) determine periodically and not less than once every quarter whether the provisions of the Act, Regulations, by-laws and relevant policies have been complied with—
 - (i) in making of loans including loans to officials, business loans and loans to organizations, associations and corporations;
 - (ii) in respect of any overdrawn from deposit accounts;
 - (iii) in administration of members' accounts; and
 - (iv) in the maintenance of the minutes of meetings, the Board and Credit Committee;
- (e) receive and investigate complaints made by members of the society about the management of the society;
- (f) monitor the management of the society;

- (g) ensure that the society complies with the Act, Regulations and by-laws; and
- (h) verify the assets of the society and monitor whether the assets are properly protected.

Procedures on appeal of termination of membership

17. (1) Where a person appeals the termination of his membership to the Registrar pursuant to section 34 of the Act, the person shall submit a written statement to the Registrar within thirty days of the date of—

- (a) the members' resolution terminating the person's membership pursuant to section 32 of the Act; or
- (b) the members' confirmation of the directors' order terminating the person's membership pursuant to section 31 of the Act.

(2) A person appealing the termination of his membership shall set out in his written statement as required pursuant to paragraph (1)—

- (a) any reason for the termination of his membership of which he has personal knowledge;
- (b) the grounds on which his appeal lies; and
- (c) any relevant facts or information, in addition to those described in paragraphs (a) and (b), that the Registrar may require.

(3) The Registrar, on receiving an appeal, will so notify the Credit Union Secretary and within seven days of such notification, the Credit Union will file a copy of the records as set out in paragraphs (1)(a) or (b) above with the Registrar along with any other relevant facts or information.

(4) The Registrar shall hear an appeal pursuant to section 34 of the Act within thirty days after the date that he receives the completed written statements pursuant to paragraphs (1) and (3) and inform the appellant, and Credit Union, in writing, within fourteen days after the hearing of the appeal, of the outcome of the appeal thereof.

Unclaimed amounts in case of terminated membership

18. Where the amount held to the credit of a member whose membership has been terminated—

- (a) the society must send a notice to the last known address of the terminated member setting out the amount of and the consequence for not claiming the funds held;
- (b) if the amount is less than \$25, the society may add that amount to its income from operations; or
- (c) if the amount is \$25 or more, the society shall place that amount in a special reserve fund,

the member may claim the funds without interest up to ten years after the date of the notice in (a) being sent but after such time the funds in the special reserve fund not claimed shall escheat to the Crown.

Amendment of by-law

19. (1) Where pursuant to sections 13 and 51 of the Act a registered society amends its by-laws, such amendment shall be by a resolution of the members of the registered society at a general meeting.

(2) Every resolution made under paragraph (1) of this regulation shall not be valid unless it was approved by a majority of not less than $\frac{2}{3}$ of the members present at the general meeting at which it was proposed but the meeting must consist of at least 20% of the members or fifty persons, whichever is less.

(3) A copy of the resolution under paragraph (1) of this regulation shall be forwarded to the Registrar together with two copies of the amendment within a reasonable time.

By-laws of housing society

20. For the purposes of section 211 of the Act, a housing society shall provide in its by-laws that—

- (a) the society shall give a copy of the by-law and the occupancy agreement to each member;
- (b) each member is entitled to have quiet enjoyment of his housing unit;
- (c) either the society or the member is responsible for—
 - (i) the maintenance of the housing unit in a safe, habitable and reasonable state of repair;
 - (ii) the repair or replacement of fixtures; and
 - (iii) any damage to the housing unit;
- (d) the society and its agents, except in the case of an emergency are required to give reasonable notice to the member prior to entry into the member's unit;
- (e) the society shall give three months notice of any increase in housing charges except where—
 - (i) the Registrar gives his written approval for a shorter notice; or
 - (ii) the members have unanimously approved the increase at a general meeting;
- (f) the society shall give a minimum of thirty days notice to a member of the termination of his membership except where a member contravenes any by-law after having received written notice of the contravention governing—
 - (i) ordinary cleanliness of the housing unit;
 - (ii) the use of the premises for prohibited purposes; or
 - (iii) payment of housing charges; and
- (g) there shall be no acceleration of housing charges.

Liquidity

21. (1) For the purposes of this regulation—

“**liabilities**” include any deposits of money made in the credit union, any accrued interest on those deposits and any loans taken out by the credit union;

“**line of credit**” means the maximum amount which a credit union is entitled to borrow at any given time;

“**liquid assets**” means Eastern Caribbean currency and deposits of Eastern Caribbean currency made by a credit union with a bank or any other institution that takes deposits, and such other currency or currency deposits and that the credit union is entitled to withdraw on demand as well as readily marketable securities;

“**marketable securities**” includes treasury bills, government debentures, treasury notes and other similar government securities listed on the Eastern Caribbean Securities Exchange;

“**primary society**” means a primary co-operative society as defined in section 2(1) of the Act;

“**secondary society**” means a registered society which comprises mainly primary societies; and

“**tertiary society**” means a registered society all of whose members are secondary societies.

(2) A credit union shall at all times—

- (a) have in its possession liquid assets; and/or
- (b) maintain a line of credit,

in an amount sufficient to enable the society to meet its normal cash flow requirements as estimated by the society.

(3) A credit union shall at all times maintain an account or accounts—

- (a) with a bank or banks;
- (b) with a loan or trust company or companies incorporated under the relevant Act; or
- (c) with a secondary society or tertiary society whose by-laws provide for the acceptance of deposits, if the deposits can be repaid on demand.

(4) The account referred to in paragraph (3) shall be—

- (a) in an amount that is not less than 10% of the total liabilities of the registered society as shown on the society’s most recent financial statement prepared and submitted in accordance with regulation 10; and
- (b) in the form of demand deposits or deposits redeemable on notice given by the society.

(5) A credit union shall maintain the account referred to in paragraph 3, separate from its other accounts or funds.

(6) Notwithstanding paragraph (4)(b) and subject to paragraph (7), where a credit union—

- (a) was registered under the former Act, as that Act existed on the day before the coming into force of these Regulations; and
- (b) maintained at the commencement of the Act, a reserve,

the monies, maintained at the commencement of the Act, in the reserve referred to in paragraph (4)(b) may be used to satisfy the requirements of paragraph (4)(a).

(7) Where—

- (a) a credit union described in paragraph (6) does not otherwise have sufficient monies on account to satisfy the requirements of paragraph (4)(a); and
- (b) any part of the reserve referred to in paragraph (6) consists of unencumbered securities of the Government of Montserrat,

those securities shall mature within five years of the coming into force of these Regulations in order to be eligible to be used to satisfy the requirements of paragraph (4)(a).

(8) Where securities will mature after five years of the coming into force of these Regulations, the credit union shall, as soon as practicable after the coming into force of these Regulations, sell those securities and use the proceeds of the disposition to purchase deposits in accordance with the requirements of paragraph (3).

(9) Within six months of the coming into force of these Regulations, a credit union shall maintain at least 50% of the amount required by paragraph (4)(a) in liquid assets if it does not already do so.

(10) Subject to section 125(3) of the Act, where a credit union does not have in its possession liquid assets, does not maintain a line of credit or does not do both of those things in an amount sufficient to enable the credit union to meet its normal cash flow requirements as required by paragraph (2), the credit union may use the amount in its account required to be maintained by paragraphs (3) and (4) to satisfy the requirements of paragraph (2) but only for the period of one month or such extended period, not to exceed three months, as the Registrar may determine.

Loan approval

22. (1) An application for a loan must be made on a form provided by the society and must state—

- (a) the purpose for which the loan is required;
- (b) the security, if any, offered; and
- (c) any other information the Credit Committee or Loans Officer requires.

(2) When a loan application is approved, the Credit Committee or loans officer approving the loan shall do so in writing and ensure that the application and approval specify with respect to the loan—

- (a) the amount approved;
- (b) the terms of payment;
- (c) the rate of interest;
- (d) any security to be held by the credit union;
- (e) any guarantees to be taken;
- (f) any other conditions specified by the Credit Committee or the person approving the loan in addition to those mentioned in sub-paragraph (a) to (c); and
- (g) the date of approval of the loan.

(3) Loan granted by a credit union shall be evidenced by a signed loan agreement between the credit union and the applicant.

(4) No member of the Credit Committee or of the Board or Supervisory and Compliance Committee or any other person who has been authorised to approve loans shall be present at the discussion of the approval of or approve a loan to himself or any persons with whom such person is related or has a fiduciary relationship.

Borrowing by directors and other officers

23. (1) No officer, director, Credit Committee member, Supervisory and Compliance Committee member, or employee of a society, may borrow from the society an amount in excess of his holdings therein in shares, deposits and accumulated earnings, unless approved by the vote of 2/3 of the other members of the Board, Credit Committee and Supervisory and Compliance Committee sitting together.

(2) A meeting referred to in paragraph (1) is not properly constituted unless a quorum of the members of the Credit Committee is present.

(3) No registered society shall lend any member an amount exceeding—

- (a) 10% of the aggregate of the registered society's share capital, retained earnings and reserves;
- (b) the aggregate of the members' ordinary deposits and the society's reserves; or
- (c) such lesser percentage as is specified in the by-laws.

Security for loans

24. The Board of Directors, shall by resolution, establish within the credit policy, requirements with respect to—

- (a) the collateral security and/or guarantors required for approved loans; and
- (b) the manner in which the fair market value of any real property obtained as a security for a loan is to be calculated.

Maximum period for interest on loans

25. For the purposes of section 206(1) of the Act, interest on loans may be paid at intervals not exceeding one month.

Loan terms and conditions

26. The terms and conditions upon which each loan shall be granted and repaid shall include but not be limited to the following—

- (a) every application for a loan shall be accompanied by such information about the financial position and income of the borrower as the Credit Committee or loans officer may require;
- (b) no society shall make a loan to an unincorporated organization. Where such a loan is contemplated, it shall be made to one or more of the members or officers of the organisation provided, however; that the society shall, in any such particular case, require such additional security by way of endorsement of the promissory note as may be deemed desirable;
- (c) no loan shall be made to a member if it would cause the total indebtedness of the member to the credit union to exceed 10% of the paid-up capital and deposits of the credit union;
- (d) the total of all loans made to associations, organizations or corporations, shall not, at any time, exceed 25% of the total shares and deposits of the credit union;
- (e) no loan shall be made to a company unless such loan is personally guaranteed by shareholders of the company holding a majority of the shares in value and in voting rights provided that, such personal guarantee shall not be required where the loan is guaranteed by an organization or agency of Government;
- (f) no loan shall be made by a society to a corporation if a majority of the shares of the corporation are held by the officers and directors of the credit union unless the application has been approved by the Registrar;
- (g) transactions in the loan account of a member shall be shown by the necessary entries in a passbook or statement to be delivered to each member;
- (h) where a mortgage on land or building is taken as security for a loan, the amount loaned shall not exceed 90% of the market value of the land or buildings;
- (i) before such a loan is made, the Credit Committee or loan officer shall require that an appraisal of the market value of the property be made by an appraiser whom they believe to be competent and who is instructed and employed by the Credit Union independently of any owner of the property on a form approved by the Registrar;

- (j) the expenses, if any, of any appraiser employed pursuant to sub-paragraph (i) may be borne by the applicant for the loan.

Bad and doubtful loans

27. (1) When the whole or part of a loan made by a credit union remains unpaid for a period of twelve months after the date fixed for repayment in full of monies loaned and no payment on account of principal has been made after the date, the amount of the principal remaining unpaid, shall be charged to and paid from the reserve for doubtful accounts fund less than any money standing to the credit of the borrower on the books of the credit union in a share or deposit account and less the market value of any security held by the credit union in respect of the loan. The society may, with the Registrar's approval, reduce the period of twelve months.

(2) Any monies subsequently recovered with respect to such loans shall be taken into income.

(3) All interest which has been collected thereon during the current year shall be deducted from the outstanding loan interest, if not already done so, before the write off is made.

(4) With the approval of the Board, any collection fees or commissions, or legal charges incurred in the collection of the loan may be added to the loan before the write off is made.

Bad and doubtful Loan allowance

28. (1) A credit union shall establish and maintain on its books and accounts a minimum allowance for loan losses in the amount of 3% of its total loan portfolio.

(2) When a credit union identifies a loan as a doubtful or, uncollectible loan, the credit union shall immediately allow for the doubtful loan by—

- (a) establishing on its books and accounts an allowance for the doubtful loan in an amount equal to the difference between—
 - (i) the book value of the loan, including any interest due and unpaid and interest accrued; and
 - (ii) the realizable book value of the loan as estimated by the credit union;
- (b) reporting on any income statement it prepares, including its annual income statement required pursuant to regulation 10, as a loss from income an amount as an allowance for doubtful loans equal to the sum of allowances for all doubtful loans established in accordance with sub-paragraph (a); and
- (c) reporting on any balance sheet it prepares, including its annual balance sheet—
 - (i) the value, as an asset, of its doubtful loans in an amount equal to the value of all the doubtful loans as stated on its books and accounts less the allowance for the doubtful loan established in accordance with sub-paragraph (a); and

- (ii) any property or other assets acquired in the financial year pursuant to a foreclosure realisation proceedings on a loan that was a doubtful loan at an amount not greater than the realisable value of the loan—
 - (A) as estimated by the credit union pursuant to sub-paragraph (a)(ii); and
 - (B) as stated on the books and accounts of the credit union before the property or assets were realized pursuant to the foreclosure or other proceedings.

(3) Notwithstanding paragraph (2), a society registered under the former society Act in respect of the financial year prior to the society's continuance may, instead of charging its allowance for doubtful loans to its income in the manner required by paragraph (2)(b), charge the amount of the allowance as calculated pursuant to paragraph (2)(a) to the reserve required by the Act.

(4) A credit union shall report, at the end of each financial year to the Registrar—

- (a) the number and amount of doubtful loans for which an allowance has been made in accordance with this regulation in that financial year;
- (b) the amount of allowance for doubtful loans made pursuant to paragraph (2) or (3) in that financial year; and
- (c) the value of property and other assets recovered in that financial year on doubtful loans.

(5) The Board of directors of a credit union shall cause a list of all doubtful loans to be available at the registered office of the credit union for any examination required by the Credit Committee, Supervisory and Compliance Committee or the auditor of the credit union, and the Board shall send a copy of that list to the Registrar.

(6) The list referred to in paragraph (5) includes with respect to each doubtful loan—

- (a) the name of the borrower;
- (b) the amount of the loan; and
- (c) the amount of any allowance made pursuant to this regulation.

(7) Where a credit union determines that the allowance for doubtful loans required by paragraph (2) will result in a net loss on its income statement for the financial year, it shall immediately notify the Registrar in writing of that fact.

Overdue Loans

29. (1) The loss exposure on overdue loans at the end of the fiscal year, shall be calculated in accordance with Schedule.

<i>Duration of period of Overdue Loans</i>	<i>Percentage of Outstanding Loans Balance that is Deemed Loss Exposure</i>
two months but less than six months	25%
six months but less than nine months	50%
nine months but less than twelve months	75%
twelve months and over	100%.

(2) For the purpose of these Regulations, “**overdue loan**” means a personal, mortgage or other type of loan on which the member is in default for more than thirty days on a payment or payments of principal or interest according to any agreement he has with the credit union.

Investments

30. Money not required for current purposes of the society may be deposited or invested in accordance with section 120(2) of the Act. Section 120(2)(i) of the Act shall include shares and securities in a suitably established Stabilization Fund.

Use of Statutory Reserves

31. (1) Subject to the written approval of the Registrar, a society may use its statutory reserves for the following purposes—

- (a) make good deficiencies created by its operations; and
- (b) to recoup losses on its investments that cannot be covered from income for the year in which the loss was sustained.

(2) When the Registrar receives a request for approval pursuant to paragraph (1) he may—

- (a) exempt the society from compliance with regulation 28(2)(a) for any period of time that he considers appropriate;
- (b) restrict the purposes for which the society may use its statutory reserves; or
- (c) do all or a combination of the things mentioned in sub-paragraphs (a) and (b).

Credit Committee

32. (1) For the purposes of section 60 of the Act and subject to the Act and the by-laws, the Credit Committee of a credit union shall—

- (a) recommend to the Board policies and procedures to be followed by the credit union for approving and granting loans made by the credit union;
- (b) monitor, through reports from the credit union’s auditor and other officers of the credit union, loan procedures used by the credit union;

(c) review all applications for loans, loan extensions and revisions of the terms of loans that are referred to it by the Board or an officer of the credit union; and

(d) review reports of officers of the credit union that are submitted to it pursuant to paragraph (2).

(2) The Credit Committee shall keep a record, with respect to each application for a loan or a renewal or extension of a loan considered by it, of—

(a) the name of the applicant;

(b) the amount of the loan applied for or the change in the terms or conditions applied for; and

(c) whether the application was approved, declined or deferred.

(3) Where, in the opinion of the Registrar, the policies of the credit union are not sufficient to protect the deposits of the credit union's members, the Registrar, in writing, shall direct the credit union to take such measures to protect those deposits.

(4) Where—

(a) the Registrar has sent a written directive pursuant to paragraph (3);

(b) the credit union fails to take measures that protect the deposits of the credit union members, or the measures taken are, in the opinion of the Registrar, insufficient;

(c) the Registrar is of the opinion that the credit union has not sufficiently protected the deposits of its members,

the Registrar may direct the credit union to adopt and follow any policies that the Registrar may impose and the credit union shall adopt and follow those policies and the Board of Directors of the credit union shall ensure that the credit union does adopt and follow those policies.

Interest on loans

33. (1) For the purposes of section 206(3) of the Act, no interest payments are to be included in the credit union's income where the interest payments are with respect to a doubtful loan for which an allowance has been made pursuant to regulation 28 or 29 or to both regulations 28 and 29.

(2) Subject to paragraph (3), a credit union may include in its income a maximum of two months accrued interest with respect to a loan.

(3) The Registrar, in writing, may allow a credit union to include in its income accrued interest on loans where the interest has accrued for a period longer than two months.

Deposits

34. (1) Subject to this regulation the terms and conditions for the receipt of deposits by a registered society shall be set out in the by-laws of the society.

(2) No credit union shall establish and operate, without the approval of the Registrar, deposit account that permit funds in the account to be withdrawn or transferred by the depositor by means of—

- (a) a cheque;
- (b) another bill of exchange; or
- (c) any other negotiable instrument,

that allows the holder of the negotiable instrument to have payment on demand made to him from funds in the deposit.

(3) No credit union shall, without the approval of the Registrar, accept funds on deposit for a term that is stipulated in any agreement between the credit union and the depositor to be longer than five years.

(4) Where a credit union accepts deposits for a term that is stipulated in an agreement between the credit union and a depositor, the credit union shall provide a receipt to the depositor showing—

- (a) the terms and conditions pursuant to which the funds are deposited by the depositor and accepted by the credit union;
- (b) the date on which the deposit matures;
- (c) the rate of interest to be paid by the credit union on the funds deposited;
- (d) the date or dates when interest is to be paid by the credit union; and
- (e) any conditions that the Board has stipulated for withdrawal of funds by the depositor prior to the date the deposit matures.

(5) Where a person has deposited funds in an account with the credit union, the person is entitled to receive and the credit union shall provide a statement showing the transaction conducted by the person involving the person's account, the balance of funds in the account and any other information that the credit union considers important.

(6) The Board may, in consultation with the Registrar, determine the form in which the statements required pursuant to paragraph (5) are given.

Maximum liability on deposits and loans

35. (1) Pursuant to section 123 of the Act, every registered society shall from time to time fix, at a general meeting, the maximum liability the society may incur in loans or deposits from a member or non-member.

(2) The maximum liability fixed by paragraph (1) is subject to the approval of the Registrar.

(3) No society shall exceed the maximum approved by the Registrar pursuant to paragraph (2).

(4) The Registrar may, at any time, review the maximum approved pursuant to paragraph (2) and vary that maximum.

(5) No society shall accept shares or ordinary deposits of more than \$20,000 in any one transaction from a member or non-member without an accepted declaration of the source of funds.

Bank account

36. (1) The directors of a registered society may open and maintain an account at any bank.

(2) Cheques drawn on an account mentioned in paragraph (1) shall be signed by the treasurer of the society and a director or by two directors.

(3) Without affecting paragraph (2), the Board may authorise the manager or another senior employee to perform any of the duties of the treasurer, including the signing of cheques.

Branches

37. In this regulation, “**branch**” means any office of a credit union where the credit union proposes to carry on business, including accepting deposits and operating a chequing service, separate and apart from its Head Office.

Savings

38. Anything lawfully done under or in accordance with a provision of the Cooperative Societies Regulations that were in force immediately before the coming into force of these Regulations shall be taken to have been done under and in accordance with the corresponding provision of these Regulations and shall continue to have effect accordingly.

FIRST SCHEDULE

FORMS

FORM 1

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

APPLICATION FOR REGISTRATION

(Complete in printed or typed form only)

To: The Registrar of Co-operative Societies

1. Application for registration pursuant to the Co-operative Societies Act is hereby made by the persons whose names and signatures appear hereunder.

2. The name of the society is:

3. The registered address of the society is:

4. The area of operation of the society is:

5. The objects of the society as stated in the By-Laws are:

6. The membership fee is:

7. The financial year will terminate on the _____ day of _____ in each year.

8. The liability of the members for the debts of the society is limited/unlimited.

9. The society was established on _____ day of _____ 20__ and at the date of this application there are _____ members in the society.

10. Enclosed herewith are three copies of the proposed By-Laws of the society.

11. The amount of \$_____ is enclosed, being the fee for registration.

12. Particulars relating to the applicants are as follows:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

13. The following persons have been appointed and have consented to act as provisional directors:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

14. The full name and address of the Secretary are as follows:

Dated the _____ day of _____, 20_____

Secretary

FORM 2

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF REGISTRATION

Certified that the application dated _____ made by _____
to be registered under section 9 of the Co-operative Societies Act as the
_____ has been accepted and that the said society has
been registered accordingly as No. _____ subject to the said Act and the Regulations
made thereunder.

Dated this _____ day of _____ 20 _____

Registrar of Co-operative Societies

FORM 3

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF CHANGE OF NAME

Certified that _____ pursuant to a directive
given by the Registrar on the _____ day of _____
20 _____ under section 17 of the Co-operative Societies Act has amended its By-Laws
and will hence forth be known as _____ and that the said
amendments have been duly registered.

Dated this _____ day of _____ 20 _____

Registrar of Co-operatives Societies

FORM 4

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

**CERTIFICATE OF CHANGE OF NAME
(Voluntary Change of Name)**

Certified that _____ by a resolution passed in accordance with sections 13 and 46 of the Co-operative Societies Act and regulation 19 of the Co-operative Societies Regulations has amended its By-Laws and will hence forth be known as _____ and that the said amendments have been duly registered.

Dated this _____ day of _____ 20 _____

Registrar of Co-operatives Societies

FORM 5

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

NOTICE OF CHANGE OF DIRECTORS

Name of Society:

Registration No:

On the _____ day of _____ 20____, the following persons ceased to be directors of the above-named society:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

On the _____ day of _____ 20____, the following
persons ceased to be director of the society:

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

The directors of the society are—

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Full Name (Please Print): _____

Date of Birth: _____ Occupation: _____

Address: _____

Signature: _____

Certified correct this _____ day of _____ 20_____

Signature

Officer

FORM 6

*(Regulation 3)*CO-OPERATIVE SOCIETIES ACT
(Sections 108, 109 and 112)

CO-OPERATIVE SOCIETIES REGULATIONS

INSTRUMENT OF CHARGE

I _____
of _____
(hereinafter called “**the Borrower**”), being owner of the property described in the
Schedule hereto, and being a member of

(hereinafter called “**the Society**”), in consideration of the sum of _____
_____ dollars lent to me this day by the
Society, the receipt whereof is hereby acknowledged, I do hereby create a charge on
the property described in the Schedule hereto, in favour of the Society as security for
the repayment to the Society of the said sum of _____
dollars together with interest thereon at the rate of ____% a year, by _____
installments of _____ dollars as from the _____
day of _____ 20 ____.

Now these presents witness that in consideration of the sum lent to the Borrower as
aforesaid the Borrower hereby created is subject to the following covenants and
conditions, that is to say:

(1) That he will repay the principal together with interest thereon on
the _____ day of _____ 20 ____.

(2) That he will not, at any time while any moneys remain owing hereunder,
do or allow to be done any act whereby the property may become prejudicially
affected.

(3) That he is entitled to retain possession and use of the property unless he
makes default—

(a) in the payment of any installment or of the principal or interest
thereon; or

- (b) in the observance or performance of any covenant or condition herein expressed in which case the Society may immediately upon such default or at anytime thereafter, through an agent authorised by the Society in that behalf—
- (i) seize and take possession of the property or any part thereof; and
 - (ii) sell the property so seized and taken possession of either at auction or by private treaty and in either case the property may be sold separately or together or in lots or for a lump sum payment or for payment by installments as the Society may deem expedient.
- (4) That upon a sale of the property or of any part thereof by the Society the following provisions shall have effect, that is to say:
- (a) the proceeds of sale shall be applied in accordance with sections 108 and 112 of the Co-operative Societies Act;
 - (b) no purchaser of such property shall be bound to inquire to the propriety or regularity of the sale or shall be affected by an impropriety or irregularity of or at such sale;
 - (c) the Society shall not be answerable to the Borrower in damages or otherwise for any loss occasioned to the Borrower by the sale or for any act, neglect or default of the Society or of its authorised agent.

THE SCHEDULE

(Add additional sheet if space allotted is too small)

Executed in quintuplicate at _____
this _____ day of _____ 20_____

Signature of Borrowing Member

Signed in our presence by the said _____

who is personally known to us.

President/Chairman

Secretary of the _____

NOTE: To be signed in quintuplicate in accordance with section 109(1) of the Co-operative Societies Act.

FORM 7

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

DETERMINATION AND ORDER

IN THE MATTER OF A DISPUTE
BETWEEN

_____ (Complaint)

AND

_____ (Respondent) referred to

me pursuant to section 194 of the Co-operative Societies Act.

I, _____ Registrar/Commissioner of Co-
operatives do order and determine as follows—

(1) _____

(2) _____

(3) The cost and expenses of hearing and determining the dispute are
\$ _____ be paid by _____
to

(4) I direct that costs and expenses in the amount of \$ _____
be paid by _____
to _____

Given under my hand this _____ day of _____, 20_____

Registrar/Commissioner of Co-operatives

NOTE: This Form is to be adapted in the case of an award by an arbitrator or arbitrators under section 194.

FORM 8

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF DISSOLUTION

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, was this day dissolved pursuant to section 164 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20____.

Registrar of Co-operative Societies

FORM 9

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF REVIVAL

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, has been revived pursuant to section 169 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20____.

Registrar of Co-operative Societies

FORM 10

(Regulation 3)

CO-OPERATIVE SOCIETIES ACT

CO-OPERATIVE SOCIETIES REGULATIONS

CERTIFICATE OF CONTINUANCE

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society is this day continued as a registered society pursuant to section 249 of the Co-operative Societies Act.

Given under my hand this _____ day of _____ 20 _____.

Registrar of Co-operative Societies

SECOND SCHEDULE*(Regulation 4)***FEES PAYABLE**

ITEM	FEE
	\$
1. For application for registration by a co-operative society, other than a junior co-operative	25
2. For a certificate of registration	
(a) For a credit union	300
(b) For any other registered society, other than a junior co-operative society	100
3. For reservation of name	25
4. For change of name	25
5. For search	5
6. For restoring society's name to register:	
(a) Credit union	100
(b) Other co-operative society	75
7. For the filing of the annual and special returns:	
(a) On the day that it is due – credit union	4,000
- other society	Free
(b) For each day after the date that it is due to be filed, a special filing fee	
Credit union	10
To a maximum of	500
- other society	5
To a maximum of	200
8. For a certificate of continuance	25
9. For a certificate of amendment of by-laws	25
10. For a certificate of revival	25
11. For a certificate of dissolution	25
12. For an examination of any document	10
13. For photocopies of any document:	
(a) For the first page	2
(b) For each additional page	1
14. For certification of any document:	
(a) For the first page	
(b) For each additional page	1
15. For a notice that is required to be published in the <i>Gazette</i>	The cost of placing of the notice in the <i>Gazette</i>
16. For any certificate other than certificate of dissolution or certificate for which a fee is not provided	25
17. For filing any document unrelated to anything for which a fee is not provided	10

NOTE: The fees (other than those referred to in paragraphs 1 and 2) payable in respect of a Junior Co-operative Society shall be 20% of the fees payable by a registered society, other than a Credit Union.
