



CENTRAL BANK OF  
TRINIDAD & TOBAGO

**THE POLICY PROPOSAL DOCUMENT  
FOR  
THE CREDIT UNION ACT**

November, 2009

# **THE POLICY PROPOSAL DOCUMENT FOR THE CREDIT UNION ACT**

**THE CENTRAL BANK OF TRINIDAD AND TOBAGO**

## **TABLE OF CONTENTS**

<b>1.0 INTRODUCTION.....</b>	<b>8</b>
1.1 Background .....	8
1.2 Vision of the Legislative Framework .....	9
1.3 Framework for Developing the Policy Proposal Document .....	10
1.4 Objectives of the Central Bank under the Credit Union Act .....	11
<b>2.0 DEFINITIONS .....</b>	<b>12</b>
<b>3.0 THE SUPERVISORY SYSTEM.....</b>	<b>14</b>
3.1 Components of the regulatory framework .....	14
3.2 Scope of Responsibilities .....	14
3.3 Regulations and Guidelines .....	15
3.4 Secrecy and Sharing of Information .....	16
<b>4.0 THE BUSINESS OF A CREDIT UNION .....</b>	<b>16</b>
4.1 Non-financial Activities.....	17
<b>5.0 REGISTRATION AND OPERATING CERTIFICATE.....</b>	<b>19</b>
5.1 Registration .....	19
5.2 Operating Certificate-Existing Credit Unions .....	19
5.4 Operating Certificates - New Credit Unions.....	21
5.5 Application to vary or expand the classes of business.....	22
5.6 Restriction and Revocation of an Operating Certificate .....	22
5.7 Investigation of a Society .....	23
<b>6.0 GOVERNANCE PRINCIPLES FOR CREDIT UNIONS.....</b>	<b>24</b>

6.1	General Comment .....	24
6.2	Governance by the Board of Directors .....	24
6.3	Responsibility of the Board .....	26
6.4	Committees .....	27
6.5	External Auditor.....	28
<b>7.0</b>	<b>SHARES AND DEPOSITS .....</b>	<b>29</b>
7.1	Withdrawable Shares .....	29
7.2	Permanent Shares.....	30
7.3	Deposits.....	31
7.4	Member Statements .....	31
7.5	Dormant Accounts .....	31
7.6	Insurance Protection of Deposits and Shares.....	32
<b>8.0</b>	<b>CAPITAL.....</b>	<b>32</b>
8.1	Institutional Capital.....	33
<b>9.0</b>	<b>BORROWINGS.....</b>	<b>33</b>
<b>10.0</b>	<b>LIQUIDITY.....</b>	<b>34</b>
<b>11.0</b>	<b>LOANS.....</b>	<b>35</b>
11.1	Delinquent Loans: .....	36
<b>12.0</b>	<b>INVESTMENTS .....</b>	<b>37</b>
12.1	Substantial Investments .....	37
<b>13.0</b>	<b>PROHIBITED TRANSACTIONS .....</b>	<b>38</b>
13.1	Related Parties .....	38
13.2	Real Estate .....	39
13.3	Credit Exposures.....	40
13.4	Branches.....	40
13.5	Dividends .....	40

13.6	Exceptions to the Restriction on Dividend Payments and other Distributions from Equity during the Transition Period .....	41
<b>14.0</b>	<b>REGULATION AND SUPERVISION .....</b>	<b>42</b>
14.1	General Powers of the Central Bank.....	42
14.1.1	On-site Examinations and Off-site Monitoring .....	42
14.2	Information Requirements .....	43
14.3	Audited Financial Statements .....	44
14.4	Preventive and Corrective Measures .....	45
14.5	Directions .....	45
14.6	Direction for removal.....	46
14.7	Winding up of a Credit Union .....	47
14.8	Voluntary Liquidation.....	47
14.9	Order of Distribution Upon Winding-up .....	48
14.10	Mergers and Transfers .....	48
14.11	Offences and Penalties .....	48
14.12	Appeals .....	49
<b>15.0</b>	<b>SECONDARY BODIES .....</b>	<b>50</b>
<b>16.0</b>	<b>EXEMPTED SOCIETIES .....</b>	<b>50</b>
<b>17.0</b>	<b>PRUDENTIAL CRITERIA .....</b>	<b>50</b>
<b>18.0</b>	<b>TRANSITION PERIOD.....</b>	<b>53</b>
<b>19.0</b>	<b>FIRST SCHEDULE: BUSINESS OF A CREDIT UNION.....</b>	<b>55</b>
<b>20.0</b>	<b>SECOND SCHEDULE.....</b>	<b>56</b>
<b>21.0</b>	<b>APPENDIX I .....</b>	<b>57</b>
<b>22.0</b>	<b>APPENDIX II.....</b>	<b>58</b>
<b>23.0</b>	<b>APPENDIX III .....</b>	<b>61</b>

## EXECUTIVE SUMMARY

In July 2005 Cabinet agreed that the supervision of the financial activities of all credit unions should be integrated, under the aegis of the Central Bank of Trinidad and Tobago, with the supervision of insurance companies, pension funds and financial institutions licensed under the Financial Institutions Act Chapter 79:09. Cabinet also agreed that the Co-operative Societies Act, Chap. 81:03 (CSA) should be amended to remove the supervision of the financial activities of credit unions from the mandate of the Commissioner for Co-operative Development. The Central Bank intends to fulfill its mandate through the establishment of a Credit Union Act (CUA).

Given the co-operative nature and democratic systems of governance of credit unions, it would be inappropriate to seek to regulate them under legislation intended for commercial banks or other types of financial institutions. Rather, the requirement is for specific legislation that recognizes the special characteristics of credit unions. This Policy Proposal Document forms an important part of the groundwork for the creation of such legislation. It is intended to serve as a basis for discussion and consultation with key stakeholders, with a view to developing the best possible legislation for the credit union sector. It represents the distillation of a wide range of views expressed by individual credit unions and other key actors in the credit union sector during the course of consultations on the Policy Proposal Document.

The positions put forward in this Policy Proposal Document were informed by a number of other sources including: the White Paper on Reform of the Financial System of Trinidad and Tobago; the draft Credit Union Supervision Act (CUSA) of August 15, 2003 that was presented to and approved by Cabinet in 2003; the CSA; World Council of Credit Unions (WOCCU) Model Law 2<sup>nd</sup> Edition; the FIA and various drafts of the Financial Institutions Bill (FI Bill) and new Financial Institutions Act 2008 (FIA 2008); annual reports of credit unions; meetings held with several representatives of the movement and the Ministry of Labour and Small and Micro Enterprise Development, international credit union consultants and the legislation of some Caribbean countries and other jurisdictions.

The proposals have been organized into four main categories: the supervisory system; certification and on-going supervision; prudential criteria and the supervised entity. Highlights of the proposals within each category are summarized below.

Proposals related to the **supervisory system** would:

- Define the Regulatory Framework
- Enable the Central Bank to share information with other supervisory agencies;
- Enable the Central Bank to determine the safety and soundness of credit unions;
- Help to maintain public confidence in, and promote the stability of the financial system of Trinidad and Tobago.

Proposals related to the **certification and on-going supervision** would:

- Require a credit union to be registered under the CSA and to obtain an operating certificate from the Central Bank to conduct the business of a credit union;
- Outline the business of a credit union, where the business includes the provision of financial services as listed in the First Schedule.
- Require board members and members of committees that the credit union will be required by law to establish and officers to meet fit and proper criteria;
- Promote governance principles for credit unions by requiring mandatory term limits for board members and additional committees such as Investment and Risk Management Committees, where the complexity of the operations and risk profile of the credit union may require such;
- Require the submission of audited financial statements and other information as deemed necessary;
- Establish enforcement powers to enable the Central Bank to issue directions to credit unions to become compliant with the CUA and to cease from engaging in unsound practices.

Proposals related to **prudential criteria** would:

- Require credit unions to maintain a minimum level of institutional capital of eight (8) percent of total assets.
- Restrict the payment of dividends where a credit union has not met the required level of institutional capital;
- Restrict credit unions to borrowings of 8% of total assets with the option (subject to certain conditions) to borrow up to a maximum of 10 percent of total assets;
- Limit a credit union's credit exposure to a single entity, individual member or related party or parties, either individually or collectively, to twenty-five (25) percent of institutional capital;
- Limit a credit union's equity investment in an individual entity to less than 20 percent of the shares of that entity, except for a locally regulated financial entity;
- Limit investment by a credit union in the equity of other entities in aggregate to a maximum of twenty (20) percent of the credit union's institutional capital;
- Require credit unions to maintain a minimum liquid assets ratio of fifteen (15) percent in relation to total liabilities inclusive of members' withdrawable shares.
- Restrict a credit union's real estate holdings to 5% of its total assets except for owner occupied property i.e. real estate necessary for conducting its business or housing its officers or employees.
- Restrict a credit union's real estate holdings acquired either directly or indirectly for the satisfaction of debts due, to a maximum period of five years from the date of acquisition.

Proposals related to the **supervised entity** would:

- Establish an optional category of permanent shares which would form part of the capital of the credit union ;
- Allow member shares and deposits to be withdrawable on demand or subject to a required period of notice;
- Specify conditions under which a credit union can make loans to its elected officers;
- Permit a credit union to voluntarily wind-up its business affairs with the approval of the Central Bank;
- Provide for the regulation of Secondary Bodies.

Proposals related to the **remaining matters** would:

- Retain within the purview of the Commissioner the power of registration, the power to de-register credit unions that have been wound up by the Central Bank, as well as jurisdiction over all constitutional matters that relate to registration, by-laws and the resolution of disputes;
- Authorize the Central Bank to impose civil money penalties on credit unions for breaching certain sections of the CUA and to specify criminal penalties;
- Establish the right of credit unions to appeal the imposition of civil money penalties and certain other regulatory decisions of the Central Bank to a Judge in chambers;
- Allow a transition period ranging from six (6) months to five (5) years for existing credit unions to become compliant with the CUA.
- Allow the Central Bank to issues guidelines that govern sound business, governance and risk management practices of credit unions.

## 1.0 INTRODUCTION

### 1.1 Background

The White Paper on the Reform of the Financial System of Trinidad and Tobago outlined several policy recommendations for the supervision of the credit union sector. In keeping with these recommendations, the Ministry of Finance embarked on efforts to upgrade the legislation for credit unions and a decision was taken to transfer supervision of the sector from the Commissioner for Cooperative Development (the Commissioner) to the Central Bank of Trinidad and Tobago (the Central Bank).

The following outlines the sequence of decisions leading to Cabinet's approval for the creation of a separate Act to regulate the financial activities of credit unions:

Cabinet Minute No. 59 of 2004 considered by Cabinet on January 8, 2004 and confirmed on January 15, 2004:

Cabinet accepted the draft legislative framework proposed by a Consultant for the supervision and regulation of the financial operations of credit unions. The framework proposed that supervision of credit unions should be undertaken by a new body known as the Credit Union Supervisory Authority.

Cabinet Minute No. 3378 of 2004 considered by Cabinet on December 2, 2004 and confirmed on December 9, 2004:

Cabinet agreed to bring credit unions with an asset base of \$100 million and above, as well as those undertaking business of a banking nature as defined by the CUA, under the supervision of the Central Bank. The result would be that the financial operations of credit unions would be regulated by two distinct bodies, the Credit Union Supervisory Authority and the Central Bank. This decision was taken in the context of the dynamism of the credit union sector since 2000, and ongoing innovation in the range and complexity of products and services offered. The larger credit unions were seen to be moving in the direction of providing a full suite of financial services to their members and engaging in speculative investments or non-financial business such as real estate.

Cabinet Minute No. 1767 of 2005 considered by Cabinet on July 7, 2005 and confirmed on July 14, 2005:

Cabinet agreed that:

- the supervision of the financial activities of all credit unions should be assumed by the Central Bank of Trinidad and Tobago and integrated with the supervision of financial institutions licensed under the FIA, insurance companies and pension funds;
- that the draft legislative framework which was approved by Minute No. 59 of January 2004 be amended for the point above;



- the Co-operative Societies Act, Chap. 81:03 be amended to remove the supervision of the financial activities of credit unions from the mandate of the Commissioner.

## ***1.2 Vision of the Legislative Framework***

Credit unions are currently regulated under a legislative framework that governs the cooperative sector as a whole. In the proposed new framework credit unions will be governed under two Acts. The CUA will focus on prudential matters with specific emphasis on safety and soundness of credit unions and will be administered by the Central Bank. The CSA will cover the registration, membership, education and development of credit unions. This Act will continue to be administered by the Commissioner. Appendix II outlines the revised roles of the Commissioner with regards to credit unions under the CSA. Appendix III outlines the relevant sections of the CSA and Regulations that will be dis-applied as they relate to credit unions.

An important aim of the new legislation is to ensure that, in terms of their safety and soundness, credit unions in Trinidad and Tobago are on equal footing with not only other domestic financial institutions but also with their counterparts in the most advanced international jurisdictions. As cooperative societies, credit unions value volunteerism, democracy, member equality and participation, co-operation, education and training of members, and the sustainable development of communities. In framing new legislation it is important not to lose sight of these characteristics which set credit unions apart and in fact make them unique within the financial sector.

The process of framing the CUA must take cognizance of institutional context and local realities. In determining appropriate prudential criteria, governance standards and overall regulatory requirements, the Central Bank will keep in mind the institutional profile of the domestic credit union sector. In particular, the Central Bank is aware of the large size disparities and varying risk profiles among local credit unions, as well as differences in the levels of complexity of their operations.

In light of consultations with stakeholders on the Policy Proposal Document, the Honourable Minister of Finance will recommend approval of the following:

- the Policy Proposal Document;
- the Draft Credit Union Bill and Regulations

The Draft Credit Union Bill will be circulated to the credit union sector for consultation.

It is also important that the legislative framework for credit unions remain responsive to the rapid changes taking place in the financial services industry both globally and domestically. With this in mind the Central Bank proposes to undertake periodic reviews of the legislation in consultation with the credit union sector.

### ***1.3 Framework for Developing the Policy Proposal Document***

The positions put forward in this Policy Proposal Document were informed by the consultation process with the credit union sector and by inputs from the following sources:

- (i) The White Paper on Reform of the Financial System of Trinidad and Tobago
- (ii) The Note to Cabinet 1767 of June 17, 2005
- (iii) The Credit Union Supervision Act (CUSA) dated August 15 2003
- (iv) The Draft Credit Union (Financial Supervision) Act and Regulations, 2005
- (v) The Co-operative Societies Act, Chapter 81:03
- (vi) The Policy for Co-operative Societies- Towards the 21<sup>st</sup> Century
- (vii) International Labour Organisation (ILO) recommendations 193 and 127
- (viii) World Council of Credit Unions (WOCCU) Model Law 2<sup>nd</sup> Edition
- (ix) The FIA Chapter 79:09, various drafts of the FI Bill and the FIA 2008
- (x) The Companies Act 1995
- (xi) Annual Reports of a cross section of credit unions
- (xii) Ongoing collaboration with the Ministry of Labour and Small and Micro Enterprise Development and the Ministry of Finance
- (xiii) Meetings held with the Co-operative Credit Union League of Trinidad and Tobago Limited, the Association of Co-operative Credit Union Presidents of Trinidad and Tobago, Central Financing Facility, Trinidad and Tobago Credit Union Stabilization Fund Co-operative Society Limited and officers of various credit unions
- (xiv) Research conducted on other jurisdictions: the Caribbean, Canada, USA, Ireland, Malawi and Australia

### ***1.4 Objectives of the Central Bank under the Credit Union Act***

- 1) to determine the safety and soundness of credit unions and protect members' deposits and shares from undue loss;
- 2) to supervise credit unions to determine whether they are in sound financial condition and in compliance with the Act; and
- 3) to maintain confidence in, and promote the stability of credit unions and by extension the financial system of Trinidad and Tobago;

The Governor shall keep the Minister of Finance informed of all developments which relate to the supervision of credit unions in Trinidad and Tobago.

## 2.0 DEFINITIONS

<b>“Credit exposure”</b>	<p>a) the amount at risk arising from the extension of credit by a credit union or arising from investments including equities, guarantees, participations and acceptance, made by a credit union and is stated as the maximum loss that a credit union might suffer if a counterparty fails to meet an obligation; and</p> <p>b) contingent liabilities arising in the normal course of business, and which would arise from the drawing down in full of undrawn advised facilities, whether revocable or irrevocable, conditional or unconditional, that the credit union has committed itself to provide;</p>
<b>“Credit Union”</b>	is a society which has as its main objects the promotion of thrift and the creation of a source of credit for its members and which is registered under the Cooperative Societies Act, Chapter 81:03.
<b>“Commissioner for Co-operative Development”</b>	means the Commissioner appointed pursuant to the Civil Service Act, Chapter 21:03
<b>“Deposit”</b>	a sum of money paid to a credit union, whether or not evidenced by any entry in a record of the person receiving the sum of money, on terms under which the sum of money will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by or on behalf of the depositor and that credit union;
<b>“Entity”</b>	means a body corporate, wherever incorporated, a society with limited liability, a trust, a partnership, a fund or an unincorporated organization.
<b>“Gross Revenue”</b>	Total revenue received before any deductions or allowances
<b>“Institutional Capital”</b>	Components of a credit union’s institutional capital are the institutional capital reserves, retained earnings, permanent shares where applicable and any other form of capital so designated by the Central Bank
<b>“Liquid assets”</b>	the total amount of funds that are in the form of cash or any other instrument or investment that can quickly be converted into cash without significant losses
<b>“Member”</b>	includes a person or society joining in the application for the registration of a society and a person or society admitted to membership after registration, in accordance with the by-laws of that society and holding at least one share of the society

- “Minister”** means the member of the Cabinet to whom responsibility for Finance is assigned
- “Officer”**
- a) the Chairman, President, Secretary, Treasurer, manager, a member of the board of the credit union, a member of any committee that the credit union will be required by law to establish and any other individual designated as an officer by the by-laws of a credit union or resolution of the credit union’s members; and
  - b) any other individual who performs functions for the credit union similar to those performed by a person referred to in paragraph (a), whether or not the individual is formally designated as an officer.”
- “Permanent Share”** a share issued by a credit union to its members only that may not be purchased by the credit union and may not be redeemed by a member except where provided for upon the winding up of the credit union.
- “Related party”**
- (i) an officer of the credit union;
  - (ii) a relative of a person defined above. Relative in respect of any person means the spouse, including a cohabitant as defined in the Cohabital Relationships Act, parent, brother, sister, children, including the children of a cohabitational relationship, adopted children and step-children of the person;
  - (iii) an entity that is controlled by a person above
  - (iv) an entity in which a person mentioned above has a substantial investment, and a person or a member of a class of persons designated by the Central Bank as the related party of a credit union.
  - (v) a person with a significant interest i.e. holding 10% or more of the shares of the credit union;
- “Substantial Investment”** means an interest held or investment by a credit union in any entity which will be equal to or greater than twenty (20) percent of the voting securities of or equity interests in the entity.
- “Society”** means as a society registered or deemed to have been registered under the Co-operative Societies Act Chapter 81:03.

## **3.0 THE SUPERVISORY SYSTEM**

The Central Bank has responsibility for overseeing the activities of commercial banks, non-bank financial institutions, insurance companies and pension funds. The growing importance of credit unions as providers of financial services and the increasingly large volume of funds being intermediated by this sector have been significant influences on the Government's decision to bring the financial activities of credit unions within the regulatory purview of the Central Bank.

### ***3.1 Components of the regulatory framework***

- i) The Credit Union Act
- ii) The Credit Union Regulations
- iii) The Central Bank Act
- iv) Guidelines

### ***3.2 Scope of Responsibilities***

The enabling legislation for the financial regulation of credit unions is the CUA, which the Central Bank will be responsible for administering. The Central Bank also has a broader regulatory and policy-making mandate deriving from its own governing legislation, the Central Bank Act (CBA). The provisions of the CUA will therefore take precedence over all other Acts that govern credit unions with respect to financial matters with the exception of the CBA. Operationally, the Central Bank's powers under the CUA will be administered by the Inspector of Financial Institutions appointed by the President under section 7 of the FIA 2008.

In regulating and supervising the financial activities of the credit union sector the Central Bank will:

- (a) Outline the business of a credit union;
- (b) Issue Operating Certificates to existing credit unions and process applications and issue Operating Certificates to new credit unions.
- (c) Restrict or revoke Operating Certificates;
- (d) Issue regulations and guidelines;
- (e) Set the prudential criteria that credit unions are required to meet;
- (f) Obtain information (including regular statutory filings and financial statements) in such format and at such frequency as the Bank from time to time may require;
- (g) Carry out assessments of the risk profile and of the safety and soundness of each credit union through the following;
  - 1. Conduct on-site examinations of credit unions;

2. Conduct off-site supervision, which involves the continuous monitoring of the financial position and performance of credit unions and assessment of the credit union's compliance with the CUA and its Regulations through analysis of reports and information gathered.

The Central Bank can also require credit unions to take action to comply with the provisions of the CUA or to discontinue any unsound or unsafe practice

### ***3.3 Regulations and Guidelines***

Regulations are subsidiary requirements of legislation that have the force of law. Regulations under the CUA may cover any area under the Act such as the prudential criteria including permitted investments. The Central Bank also uses guidelines relevant to provisions in the CUA, to facilitate compliance with the law, addressing areas such as management practices, governance principles for credit unions, prudential criteria, risk management and internal controls.

Proposal:

- a) The Minister, in consultation with the Central Bank, may make or amend regulations under the CUA by order subject to negative resolution of Parliament;
- b) Regulations or amendments to regulations will be published in the Gazette and at least one daily newspaper for the information of all credit unions as well as the general public;
- c) The Central Bank may issue guidelines relevant to any provision of the CUA.

Examples of guidelines which have already been issued by the Central Bank, and which are intended to be applicable to credit unions, are those on:-

- Combating Money Laundering and Terrorist Financing
- Prudent Person Approach to Investment and Lending
- 'Fit and Proper'

The foregoing guidelines and others can be found on the website of the Central Bank at [www.central-bank.org.tt](http://www.central-bank.org.tt). The Central Bank will conduct roll-out sessions to familiarize the credit union sector with the application of the guidelines.

In preparing regulations and guidelines that will affect the credit union sector the Central Bank will consult with the credit union sector and the Commissioner. One such example will be the development of a Governance Principles for Credit Unions Guideline.

### ***3.4 Secrecy and Sharing of Information***

Sub-sections (1) and (2) of section 56 of the CBA will be amended to require directors, officers and employees of the Central Bank to preserve secrecy with regard to all matters relating to the affairs of individual credit unions and any of their members.

However, the Central Bank may find it necessary or prudent under certain circumstances to share information about a credit union or the sector with the Commissioner and other local or foreign regulators and will have the power to do so on a confidential basis.

#### Proposal:

- a) The Central Bank may enter into a Memorandum of Understanding governing information sharing arrangements with another regulator.
- b) The Central Bank may also share information with law enforcement authorities as required for purposes such as combating money laundering and the financing of terrorism under the Proceeds of Crime Act, 2000 and the Anti-Terrorism Act, 2005.

#### Rationale:

The sharing of information with other local regulatory authorities, e.g. the Commissioner for Co-operative Development and the Securities and Exchange Commission (the SEC) or foreign regulators is essential to the effective supervision of financial entities by the Central Bank. This is especially true in cases where the action of another regulator is likely to have an adverse effect on the operations of a credit union. In such cases, the Central Bank should be able to take appropriate pre-emptive action, if necessary.

## **4.0 THE BUSINESS OF A CREDIT UNION**

The International Labour Organisation defines a cooperative as “*an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise*”.

A credit union is a society which has as its main objects the promotion of thrift and the creation of a source of credit for its members only and which is registered under the Cooperative Societies Act, Chapter 81:03. The First Schedule represents the classes of business in which a credit union can engage. The promotion of thrift as a primary object of a credit union at a minimum would include the issuance of shares and deposit taking as listed in the First Schedule, as a form of savings. The creation of a source of credit as a primary object should involve the investment of such funds in loans to



members or investment instruments. At a minimum this would therefore include Loans\*\* or Investments\*\*<sup>1</sup> as listed on the First Schedule.

It is recognized that other types of co-operatives may grant loans and issue shares to members. The distinguishing characteristics of a credit union are that they can also accept deposits from their members<sup>2</sup> and must annually elect a Credit and a Supervisory Committee<sup>3</sup>. Consequently, those other types of co-operatives whose objects allow them to grant loans and issue shares will not be restricted from carrying out these activities.

*Proposals:*

- a) No society that holds the distinguishing characteristics of a credit union shall carry on any of the classes of business specified in the First Schedule unless it is granted an Operating Certificate by the Central Bank.
- b) It is reasonable to expect that over time credit unions may wish to expand the range of services they provide in order to meet their members' changing needs and to remain competitive as providers of financial services. To accommodate these changes the First Schedule will be subject to amendment by order of the Minister on the recommendation of the Central Bank.
- c) Prior to the Central Bank granting approval for a credit union to conduct any of the activities listed in the First Schedule, it will be the responsibility of the credit union to meet the requirements of any other legislation, where applicable, for the conduct of these activities.

#### ***4.1 Non-financial Activities***

In addition to the classes of business listed in the First Schedule, credit unions may engage in non-financial activities up to a certain limit of assets and revenues. Non-financial activities encompass the provision of non-financial services and investing in real estate. These activities, for example travel agency services and property development can pose operational and other types of risk for the credit union and are therefore subject to certain limits.

*Proposals:*

- a) Credit unions can conduct non-financial activities without breaching ANY of the following conditions:
  - i) the credit union must be in compliance with all prudential criteria as set out in the Act and Regulations;

---

<sup>1</sup> \*\*Loans and Investments as listed in the First Schedule represent the basic activities that the credit union should be conducting

<sup>2</sup> CSA Regulation 50 3 (e)

<sup>3</sup> CSA Regulation 50 3 (c)

- ii) the assets of the non-financial activities must be less than or equal to 5.0% of the credit union's asset base;
- iii) the gross revenue generated from the non-financial activities must be less than or equal to 10.0% of the gross revenue of the credit union;
- iv) reporting to the Central Bank on non-financial activities must be on a quarterly basis and be part of the annual audit for separate and distinct reporting to the AGM;

Where members of a credit union wish to engage in non-financial activities that exceed the limitations set out above, these activities must be segregated from the business of the credit union. Therefore the credit union has the option of establishing non-financial cooperatives or any other form of business enterprise in order to do so as outlined in Model A or Model B below:

Model A –

Two legally distinct cooperatives, one of which is the credit union and the other a separate cooperative which may be established to provide non-financial services. Both entities may be owned by the same members and operate under the same governance system. The non-financial cooperative would be funded with limits through the following methods:

- (a) Over a number of years, funds from net surplus may be allocated to a special fund for start-up purposes for both the funding and disposition, provided all conditions for the distribution of surplus and all prudential requirements are met.
- (b) On an ongoing basis and with the members' agreement, transfer of all or a portion of surplus to the non-financial cooperative provided all conditions for the distribution of surplus and all prudential requirements are met. Therefore operating expenses for non-financial services should not be reflected as an expense in the books of the credit union.
- (c) After start-up, a loan from the credit union to the non-financial cooperative in accordance with the credit union's established lending policies and procedures and within established prudential limits

There would be no limit on the value of funds that can be repatriated from the non-financial cooperative to the credit union.

Model B –

Credit unions acquiring ownership interest in an entity, with each credit union maintaining an equity shareholding of less than 20% in the entity but not greater than 20% of each credit union's institutional capital. The minimum number of credit unions that could have ownership interest in the entity would be subject to legislative amendments to be determined.

Rationale:

The sector requested that credit unions as cooperatives should be able to provide non-financial services to their members and assist members in whatever areas they requested. However, it should be emphasized that the inclusion of non-financial activities on a credit union's balance sheet can negatively impact it due to various factors including contagion risk from another sector, lack of expertise and understanding of the activity or lack of demand for the product. Therefore the Central Bank sees it fit to limit a credit union's involvement in such activities.

## 5.0 REGISTRATION AND OPERATING CERTIFICATE

### 5.1 Registration

A society will be required to be registered as a credit union under the CSA. The Commissioner will be responsible for registration and de-registration of credit unions and will have jurisdiction over all constitutional matters pertaining to registration and by-laws. Credit unions will not be required to include any provisions of a financial nature in their by-laws. Credit unions wishing to do so may include any provisions of the CUA and the Regulations in their by-laws and it will be the responsibility of the credit union to ensure that any inclusions will be accurate. Where there is a conflict between provisions in the by-laws and the CUA, the CUA will take precedence.

Also falling within the purview of the CSA will be the resolution of disputes between a credit union and its members and such constitutional matters relating to credit unions as the minimum required membership for the formation or continuation of a credit union, the rights of members, the election of officials, the conduct of annual general meetings and ensuring adherence to cooperative principles.

### 5.2 Operating Certificate-Existing Credit Unions

Proposals:

- a) Immediately upon passage of the CUA each existing active credit union is permitted to continue to conduct its existing classes of business and will be issued an **Operating Certificate**.
- b) The Central Bank will use the records of the Commissioner for Co-operative Development as the basis for preparation of the Operating Certificates.
- c) Operating Certificates will not be issued to those credit unions that are in the process of being de-registered by the Commissioner.

- d) Operating Certificates will not be issued to those credit unions that have been inactive within the period of 12 months prior to the passage of the Act.
- e) Each credit union that has been issued an Operating Certificate by the Central Bank will be required to display the Operating Certificate at its registered office and a copy at all branches. These certificates must be displayed in a prominent place, accessible to the public.

### ***5.3 Profile of the Credit Union***

#### Proposals:

- a) The following information- which is currently required under the existing credit union legislation, the CSA- must be submitted to the Central Bank within thirty days of the coming into force of the CUA. :
  - i) A copy of the credit union's Registration Certificate;
  - ii) A copy of the credit union's by-laws in existence upon passage of the Act;
  - iii) A list of the current officers of the credit union;
  - iv) The credit union's Annual Budget;
  - v) Copies of the three most recent audited financial statements or annual reports.
- b) Within a reasonable period of time following the thirty day period, the Central Bank may publish a list of the credit unions that have submitted the above information in a daily newspaper indicating their compliance with this section.
- c) The Central Bank will, for a period not exceeding 6 months, make all reasonable efforts to contact those credit unions that are non-compliant via registered mail at their registered offices or by any other reasonable means. The Central Bank will inform the non-compliant credit unions that they will be liable to prosecution or to the cancellation of their Operating Certificates where the required information is not provided within a stipulated timeframe.
- d) Upon expiration of the stipulated timeframe, the Central Bank may take any enforcement action as it sees fit under the Act inclusive of cancellation of the Operating Certificate;

## 5.4 Operating Certificates - New Credit Unions

### Proposals:

- a) A new credit union will be required to obtain an Operating Certificate from the Central Bank to conduct the classes of business listed in the First Schedule before commencing operations.
- b) The Central Bank reserves the right of approval of the classes of business for which a new credit union applies based on an assessment of the application and the risk characteristics and complexity of the products or services to be provided.
- c) A period not exceeding thirty-six (36) months will be allowed for new credit unions to meet the required level of institutional capital
- d) The credit union will be required to apply to the Commissioner for registration. During the registration process the credit union shall apply to the Central Bank for an Operating Certificate and its application must be accompanied by:-
  - i) a copy of the credit union's application for a Registration Certificate;
  - ii) a copy of the credit union's proposed by-laws;
  - iii) a **three-year** Business Plan demonstrating financial viability and the ability to satisfy the prudential standards under the CUA; the business plan will include, among other things, projections of deposits and shares, loans, capital level and growth in assets and membership;
  - iv) a copy of the credit union's proposed investment and credit policies including procedures for dealing with loan delinquency.
  - v) verification of the credit union's administrative and managerial capacity to conduct the proposed lines of business
  - vi) such further information as the Central Bank may require.
- f) Where the Commissioner registers a credit union, that credit union shall provide the Central Bank with the following documents so as to complete the process for the issuance of an Operating Certificate:
  - a certified copy of the Registration Certificate; and
  - a copy of the credit union's by-laws and proof of approval by the Commissioner.
- g) As an important condition for granting an Operating Certificate, the credit union will be required to provide to the Central Bank, no later than **six weeks** following the date of its registration, a list of the elected directors and other officers of the credit union and a statement signed by the President that the elected officers satisfy the fit and proper criteria
- h) The determination that a person satisfies the fit and proper criteria is to be made by the credit union itself and is subject to review by the Central Bank.

- i) Each credit union that has been issued an Operating Certificate by the Central Bank will be required to display the Operating Certificate at its registered office and a copy at all branches. These certificates must be displayed in a prominent place, accessible to the public.

### ***5.5 Application to vary or expand the classes of business***

Credit unions that are issued Operating Certificates and subject to supervision must clearly define their permitted activities. The Central Bank will have the right to vary or expand classes of business and to set criteria and reject applicants that do not comply with requirements of the Act.

#### ***Proposals:***

- a) Any variation or expansion in the classes of business will require approval from the Central Bank.
- b) A credit union that has been issued an Operating Certificate will not be permitted to vary or expand its existing range of business activities as outlined in the First Schedule, without being in compliance with the CUA.
- c) The Central Bank may vary the institutional capital and other prudential requirements and may also subject the credit union to additional criteria as a condition of such approval to expand the classes of business.
- d) Where the Central Bank refuses to vary or expand the classes of business, it will provide reasons in writing and credit unions will have the right of appeal to a Judge in chambers.

### ***5.6 Restriction and Revocation of an Operating Certificate***

#### ***Proposals:***

- a) The Board of the Central Bank may restrict the operations of a credit union under certain circumstances, such as where the credit union has failed to comply with an obligation under the CUA or violated a direction. The Board of the Central Bank will inform the board of a credit union when its Operating Certificate is being restricted and when the restrictions have been removed. Notice to members and the general public will also be published in the Gazette and in a daily newspaper.
- b) The Operating Certificate may be restricted by the imposition of conditions deemed necessary for the protection of members' deposits and shares, including but not limited to:
  - i) Requiring the credit union to take specified corrective action;

- ii) Limiting the granting of loans, the acceptance of deposits and the issuance of withdrawable shares;
  - iii) Limiting any other business activities in which the credit union may be engaged.
- c) In other circumstances, such as where the credit union remains in violation of a direction or has ceased carrying on the business of a credit union, the Board of the Central Bank may revoke its Operating Certificate. The Board of the Central Bank must inform the board of a credit union when its Operating Certificate is being revoked. Notice to members and the general public will also be published in the Gazette and in a daily newspaper.
- d) Where the Operating Certificate has been revoked, the Board of the Central Bank take steps to wind up the credit union's operations.
- e) The Commissioner will de-register a credit union which has been wound up in keeping with a decision by the Central Bank.
- f) The credit union will continue to be liable for any obligations incurred or assumed prior to the revocation of an Operating Certificate. Subsequent to the revocation however, the credit union shall not continue to incur obligations towards members except where expressly authorized by the Central Bank.
- g) The Board of the Central Bank may revoke the Operating Certificate of a credit union if within the period of 12 months of the issuance of the Operating Certificate, the credit union has failed to conduct the business of a credit union.
- h) The Board of the Central Bank may also revoke the Operating Certificate of a credit union if it has commenced the business of a credit union but has subsequently not conducted that business for a continuous period of more than six months.

## ***5.7 Investigation of a Society***

### ***Proposals:***

- a) Where the Central Bank has reason to believe that a society is conducting the business of a credit union without being in possession of a valid Operating Certificate issued under the CUA, the Central Bank will commence investigations into the operations of that society and may require information from, inquire into and examine the affairs of that society.
- b) The Central Bank may take any action that it sees fit to ensure that the society discontinues the activity in question, including, without limitation, the issuance of a directive.

- c) It shall be an offence for a society to conduct the business of a credit union unless granted a valid Operating Certificate under the CUA.

The process of investigation will be detailed in Regulations.

## **6.0 GOVERNANCE PRINCIPLES FOR CREDIT UNIONS**

### ***6.1 General Comment***

Governance principles for credit unions refer to the framework by which the Board and management of credit unions are held responsible and accountable for the operations they oversee. These responsibilities of the Board and management include achieving an appropriate governing structure of the credit union, preserving the continuity of future credit union operations, creating balance within the organization and remaining accountable for their actions.

Good governance principles therefore, require that the relationships among management, the Board, members, regulators and other stakeholders are transparent, fair and well balanced.

The governance system must be suited to the complexity and sophistication of credit unions, which have become more sophisticated in their investments, and are facing more pressure from their membership for new products and services as well as securing satisfactory returns on their deposits and shares.

### ***6.2 Governance by the Board of Directors***

The following provisions will be introduced in order to promote good governance principles by credit unions:

#### **Proposal:**

- a) Credit union members will decide if multiple directorships are allowed. A person nominated for directorship of a credit union must declare whether he/she is a director in any other credit union to the Nomination Committee where applicable and at the Annual General Meeting;

#### **Rationale:**

Conflicts of interest can arise where a director serves on the board of more than one credit union. Directors can be hampered by “ties” to other credit unions, which can discount the independence, intelligence and fortitude of those serving on the boards of multiple credit unions. The full disclosure of such arrangements to the membership of the respective entities allows the members to be aware of these potential conflicts.



Proposal:

- b) Individual board members will be allowed to serve a maximum of two consecutive terms, with each term being no longer than three (3) years, and **with the possibility of re-election after a one-year waiting period.** Where a credit union would be out of compliance with this provision, it would be required to remedy this situation within eighteen (18) months of the Act coming into effect.

Rationale:

A system of constantly changing executive reinforces the fact that the entity is not about any one person but a collection of individuals that are allowed an equal opportunity for participation in setting policies and making decisions in the credit union.

It is important that board members continue to generate new ideas and remain productive during their tenure on the board. Credit unions must therefore be cautious to prevent individuals from becoming entrenched in such positions to the extent that it hinders the generation of progressive business sense and ultimately the growth of the entity.

Members' democratic right to elect persons of their choice from the membership to serve on the board is retained and confirms the co-operative principles within the movement.

It is noted that the prescribed limit of two terms is consistent with the limit that is now applied by those credit unions that have limits in their bye laws.

Proposal:

- c) Given the importance of the Board of Directors in the governance of credit unions, Board members should have certain minimum qualifications for the role. Accordingly, a Board member must:-
- i) be an individual no less than 18 years old;
  - ii) be of sound mind and not have been found by any court to be of unsound mind;
  - iii) be a member of the credit union;
  - iv) never have been convicted by a court for an offence involving violence, fraud, or any form of dishonesty;
  - v) never have been adjudicated bankrupt by a court in any jurisdiction;
  - vi) never have been a director, officer or manager of a credit union whose Operating Certificate was revoked during his tenure in office, unless the revocation was due to voluntary winding up or voluntary amalgamation with another credit union;
  - vii) have sufficient knowledge and understanding of the business and overall financial operations of a credit union;
  - viii) meet the fit and proper criteria.

Proposal:

- d) Members of the Board and statutory committees and officers must meet and, where relevant, maintain the following Fit and Proper criteria:
- i) honesty, integrity, fairness and reputation;
  - ii) competence, diligence, capability, soundness of judgment;
  - iii) financial soundness, that is, the member should demonstrate prudence in the management of his own financial affairs;
  - iv) with regard to the previous conduct, business activities and financial matters of the person, there is no evidence that he has:
    - i) committed an offence involving fraud, violence or other dishonesty;
    - ii) been delinquent in meeting payment obligations;
    - iii) engaged in business practices that appear to be deceitful, oppressive or improper (whether lawful or not) or which otherwise reflect discredit on his method of conducting business;
    - iv) an employment record which shows that he carried out an act of impropriety in the handling of his employer's business;
    - v) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.
- e) The responsibility for establishing the fitness and propriety of persons covered by this provision, and for determining the process by which this is done, will rest with the credit union but will be subject to review by the Central Bank

Rationale:

Board members are expected to have a minimum level of integrity and competence to serve their credit union. The proposed legislation ensures that the power to determine fitness and propriety of persons to serve on the board and committees of credit unions is retained by the membership.

### **6.3 Responsibility of the Board**

The Board of credit unions has a fiduciary responsibility to the members. Accordingly, the directors should be held to a high standard of care. With the onus of greater transparency in business and more information being provided, it is appropriate that legislation stipulate the minimum duties and responsibilities of directors and management.

*Proposals:*

- a) The Board is responsible for ensuring that the management and operations of the credit union are fully in compliance with the legislation and regulations. Accordingly, the Board will be required annually to:
  - i) attest in writing to the credit union's compliance with legislation and regulations to the Central Bank;
  - ii) attest in writing to the fitness and propriety of elected officers to the Central Bank;
  - iii) provide updated listings of the composition of the Board and statutory committees to the Central Bank;
  - iv) indicate to the Central Bank which directors currently serve on other credit union boards and the names of those credit unions.
- b) It is the responsibility of the Board to approve all policies that govern the credit union, ensure that they are periodically updated and ensure compliance with these policies.
- c) Officers and employees will be required to declare existing or potential situations of conflict of interest that would hamper or disallow them from impartially performing their job duties and responsibilities.
- d) In order to avoid conflicts of interest, members of the Board must excuse themselves from discussions that are taking place or matters being voted on if they or their relatives or related parties stand to benefit or are otherwise involved.
- e) The Board should ensure that transactions with all external parties are conducted on an arm's-length basis.

## **6.4 Committees**

The Supervisory and Credit Committees are statutory committees. The Supervisory Committee conducts an examination of the affairs of the credit union at least semi-annually, produces an annual report of its audit and submits same to the members at the Annual General Meeting. The Supervisory Committee will be the primary mechanism for assessing the adequacy of internal controls and for monitoring compliance with these controls.

The Credit Committee is responsible for the general supervision of loans to members and for maintaining and ensuring compliance with the credit union's loan policy. The Credit Committee can also approve loans to members and must also verify the ability of borrowing members and their guarantors to meet their obligations under the terms of their loans.

Proposal:

- a) The Central Bank may require the credit union to establish, in addition to the Supervisory and Credit Committees, an Investment Committee, a Risk Management Committee or any other committees which it considers necessary in light of the credit union's risk profile.
- b) At least one member of the Board should be a member of any such committee.
- c) The Board representative on the Investment Committee and the Risk Management Committee should have knowledge or experience in any two of the following: financial management, accounting or auditing.

Rationale:

The function of the Investment Committee is to establish the credit union's investment policies and to coordinate and oversee the investment portfolio. Members of this Committee should have a sound understanding of investment risks and of liquidity management. This Committee will be required to monitor and report to the Board on the performance of the credit union's investment portfolio and its adherence to approved policies.

The function of the Risk Management Committee is to manage the various forms of risk to which the credit union may be exposed, including but not limited to credit, market, liquidity, operational, and legal risks. This Committee is required to keep the Board informed on the credit union's risk exposure and to inform the credit union's risk management practices by submitting regular reports to the Board.

## **6.5 External Auditor**

The Central Bank's main source of financial information relating to a credit union is the credit union itself. However, auditors have an important function and should be able to identify and report on unusual events. The usual reporting procedures, examinations and returns need to be augmented by compliance reports made by auditors. Therefore, the issues of reporting by auditors and communication between Regulator and auditors have been incorporated in the legislation of most countries.

The Regulator should have the authority to review work completed by the external auditors for regulatory purposes. The Regulator must also have the right to oppose the appointment of an external auditor that is deemed to have inappropriate expertise and/or independence.

The Regulator should also have a program for the periodic examination of regulatory returns by the examiners or through work of external auditors. There is a requirement that certain key regulatory returns such as capital adequacy be examined at least annually by the auditors and a report submitted to the Regulator.

Proposals:

- a) A credit union shall appoint annually an external auditor;
- b) an accountant or a firm of accountants is qualified to conduct an audit of a credit union if the accountant or at least one member of the firm of accountants meets the following criteria:
  - i) Is a practising member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago;
  - ii) Has knowledge and experience, satisfactory to the Central Bank, in the audit of credit unions and other financial services sectors ;
  - iii) Is independent of the credit union and the elected officers of the credit union.
- c) The Central Bank will also consider holders of valid practising certificates from other professional associations of auditors or accountants to conduct the audit of credit unions;
- d) The auditor is expected to report his audit findings to the Board of directors and to highlight any material transactions or conditions which, in his view, warrant corrective action.
- e) The Central Bank will require the credit union to submit on an annual basis a copy of the Management Letter issued by the auditor. The Central Bank may also require access to the working papers of the auditor with respect to any credit union.
- f) A credit union will be required to advise the Central Bank in writing and to provide reasons where it proposes to replace an auditor or where a person for any reason ceases to be the auditor of the credit union.
- g) A person who resigns as an auditor of a credit union or decides not to seek re-appointment must inform the Central Bank in writing as to his reasons and provide any further information that the Central Bank may require.

External audits will not be conducted by the Central Bank as this poses a conflict of interest and is not part of the Central Bank's regulatory mandate.

## **7.0 SHARES AND DEPOSITS**

### ***7.1 Withdrawable Shares***

Withdrawable shares are all shares excluding permanent shares. Generally, most credit unions classify members' shares under equity while a few classify them as liabilities. Provisions of the CSA - Section 50(3)(b) address the "withdrawability" of members' shares outlining that they are withdrawable on demand except that the Board of a credit union may require notice for a period not exceeding six months. Further, IAS32

highlights particular characteristics of members' shares, which suggests that such shares should be considered liabilities.

Member's shares in a credit union have historically been treated as equity instruments on which discretionary dividends have been paid based on the surplus of the society. Generally, share ownership confers membership in the credit union inclusive of voting rights and entitles the member to participate in dividend distributions. Additionally, Section 64 of the CSA highlights the treatment of shares on winding up.

Credit unions will not be required by the Central Bank to vary any of the aforementioned characteristics of withdrawable members' shares.

Apart from the ability to withdraw members' shares, they also retain the following characteristics:

1. Dividends are issued
2. Signifies ownership
3. In the case of a wind-up, shares are ranked after deposits

Notwithstanding the aforementioned underlying principles governing the basis for the determination of the treatment of credit unions members' shares, based on its "withdrawability", for regulatory purposes, the Central Bank will consider members' withdrawable shares for:

1. Liquidity calculations and
2. Solvency testing

Both members' withdrawable shares and deposits constitute the principal liabilities of a credit union and the major source of funding for their loan and investment portfolios.

## ***7.2 Permanent Shares***

### *Proposals:*

- a) Credit unions may, if they so choose, issue permanent shares to their members as a source of institutional capital. These shares would be issued on terms agreed between each credit union and its members and would form part of the credit union's capital for regulatory purposes.
- b) Permanent shares must be non-withdrawable and cannot be resold to the credit union or redeemed in any form. However, permanent shares are transferrable from one member to another member. In such cases, the credit union will be responsible for establishing a mechanism to facilitate such transfers between members.
- c) In the event of the wind up of a credit union, permanent shares will rank behind the claims of depositors and other creditors.
- d) Permanent shares will not qualify for Insurance protection.

Credit unions will be required to differentiate between their withdrawable shares and permanent shares for regulatory reporting purposes.

### ***7.3 Deposits***

Deposits may be either fixed for a period of time or withdrawable on demand, are remunerated in the form of periodic interest payments and may be pledged as collateral for loans.

### ***7.4 Member Statements***

#### *Proposal:*

A credit union must provide each member at least annually with a statement indicating the balance of funds standing to the member's share and/or deposit accounts and all transactions affecting the accounts since the date of the previous statement.

### ***7.5 Dormant Accounts***

#### *Proposals:*

- a) Any member deposit account reported under liabilities must be declared dormant where:
  - i) no transaction has taken place on the account for a period of more than **seven (7) years** except for the posting of interest;
  - ii) a credit union is unable to contact the account holder via registered mail, sent **every year** at the end of its financial year requesting that the account be either activated or closed and advising of the intention to classify the account as dormant;
  - iii) at the end of **the seventh year** a statement is published in a daily newspaper indicating that no transaction has taken place on the account and no statement of account has been requested or acknowledged by the account holder, and requiring the account holder or his legal representative to submit a claim to the credit union **within three (3) months of the publication**.
- b) Where an account becomes dormant the Board of directors will take steps to transfer all such accounts, interest, and other sums due or standing to that account to a special account that identifies dormant members' accounts.

- c) Nothing contained in this section shall be deemed to affect the rights of any member to recover a debt due to him by the credit union.

Rationale:

A dormant account is considered one of the most vulnerable instruments in a financial institution in terms of opportunity to conduct fraudulent transactions. Because of the inactivity of the account, monitoring of transactions and reconciling of statements may be lacking thereby increasing the risk for tampering with the account. Credit unions should have adequate controls in place to monitor these accounts which should be distinctly separated from any active accounts.

## ***7.6 Insurance Protection of Deposits and Shares***

Following the failure of a significant credit union, the Minister of Finance recommended that a mandatory insurance fund be established.

Proposal:

A mandatory Insurance Fund will be established for credit unions to provide for the protection of:

- i) members' deposits; and
- ii) members' withdrawable shares

The treatment of these instruments will be different between the two with regard to premiums paid and insurance coverage.

Rationale:

Insurance coverage assures members that their deposits and withdrawable shares with credit unions are protected and that they will be compensated should the credit union fail. An effective insurance fund contributes to the stability of the country's financial system and instills confidence in the financial sector. Credit unions granted operating certificates under the proposed Act will be required to become a member of the Insurance Fund when it is established by statute, subject to relevant rules and regulations.

Rules and regulations at a minimum may include the scope of insurance coverage, minimum eligibility standards to obtain coverage, standard premiums, minimum compensation in the event of a credit union's failure, and notice of termination of coverage.

## **8.0 CAPITAL**

A credit union's total capital is defined as the difference between the value of its assets and the value of its liabilities and would include provisions held in any special-purpose



fund created by the credit union, such as the Education Fund and the Building Fund. However, for regulatory purposes a distinction is to be made between total capital and institutional capital.

## ***8.1 Institutional Capital***

### Proposal:

- a) **Credit unions will be required to maintain a minimum level of institutional capital equivalent to eight (8) percent of total assets.**
- b) Institutional capital will comprise the following:
  - i) Retained Earnings,
  - ii) Institutional Capital Reserves,
  - iii) Permanent Shares, where applicable

### Rationale:

The purpose of institutional capital is to cover possible losses from loans, investments and other contingencies. Institutional capital also protects members' shares and deposits and is available to creditors on winding up. The defining features of institutional capital are that such capital belongs to the credit union rather than to the members and is unavailable for any purpose or to meet any claims other than those envisaged above.

The Reserve Fund which is an existing statutory requirement under the CSA will no longer be a statutory requirement under the CUA. Where credit unions choose to retain their existing Reserve Fund or any part thereof for institutional capital purposes, this fund is to be named Institutional Capital Reserves.

All other pools of funds, for example Education Fund or Building Fund will not be classified as part of institutional capital because these Funds have been allocated for specific purposes. If necessary a credit union may however dissolve these funds and include these balances in their Institutional Capital Reserve account for use as institutional capital.

## **9.0 BORROWINGS**

### Proposal:

- a) Credit unions will be allowed a borrowing limit of 8% of the total assets.
- b) Where a credit union wishes to borrow in excess of the 8% borrowing limit, it will have the option to borrow up to a maximum of 10 % of total assets and would be

required to operate at a higher level of institutional capital of 12% of total assets on a permanent basis.

The members will nevertheless be at liberty to set a borrowing limit below that which is stated in the CUA. The borrowings so determined will not include members' deposits but will include borrowing from other credit unions or from other co-operative societies.

## 10.0 LIQUIDITY

### Proposal:

- a) A credit union shall maintain a minimum liquid assets ratio of fifteen (15) percent in relation to total liabilities. Where members' withdrawable shares are reported as equity, for regulatory reporting purposes those shares shall be included in the total liabilities for calculating the liquidity ratio.
- b) Liquid assets should be in the form of cash or liquid financial instruments as follows:

“cash” includes cash balances held:

- i) in hand;
- ii) in a current account at a commercial bank;
- iii) in a call or demand account at a commercial bank; or
- iv) in a money market account in Trinidad and Tobago dollars.

“liquid financial instruments” include:

- i) securities issued or guaranteed by the Government of Trinidad and Tobago that mature in one year or less;
- ii) deposits offered by secondary bodies conducting the business of a credit union;
- iii) deposits offered by other financial institutions regulated by the Central Bank of Trinidad and Tobago;
- iv) mutual funds registered and domiciled in Trinidad and Tobago and approved by the Central Bank of Trinidad and Tobago for use as a liquid financial instrument;
- v) debt securities issued by regulated financial institutions and registered with the Securities and Exchange Commission of Trinidad and Tobago that mature in one year or less;
- vi) banker's acceptances or discounted notes issued by a commercial bank that mature in one year or less.

- c) An encumbered asset shall not be used to satisfy the requirements for the minimum liquid assets ratio.

### Rationale:

Credit Unions will be required to maintain a minimum level of liquid assets in relation to their liabilities. These liquid funds must be maintained in the form of cash or investments readily convertible into cash. Such liquid funds or statutory liquidity, enable credit unions to meet day-to-day demands by depositors for withdrawal of their funds and to pay operating expenses of the credit union. Adequate liquidity is a critical component of a credit union's operations and is a key factor in maintaining the confidence of its members.

Internationally credit unions are being required to maintain liquid funds equal to at least fifteen percent of the aggregate of its liabilities. Such investments may be in the form of cash on hand; deposits with banking institutions, an association of credit unions, a central credit union, or a central finance facility; or investments in government obligations with maturities of one year or less. In other jurisdictions liquidity requirements are in force ranging from fifteen percent to as low as five percent.

Countries with lower liquidity requirements however, are much more stringent in the determination of which assets qualify for inclusion in the ratio. In such cases, both investments and deposits must mature within one hundred days or less and only sovereign (i.e. government issued) investments are considered. In determining a suitable standard for credit unions, the Central Bank is cognisant of the availability of short term investment grade instruments locally.

## **11.0 LOANS**

### Proposals:

- a) A credit union can make loans to its members within the provisions of the CUA and in accordance with its by-laws.
- b) The Board, Credit Committee or any appointed officer for that purpose should have the authority to approve loans to members.
- c) The Board should also approve a policy for granting secured and unsecured loans. The policy should include the terms, conditions of repayment, and maximum amounts that may be borrowed as well as acceptable forms of security.
- d) In addition to generally accepted forms of security, assignment of an interest in real or personal property or assignment of shares and deposits may be deemed security.
- e) A credit union may make loans to its officers, directors, employees and loan officers and the approval process for such loans may be the same as for other members. However where a loan to an officer, director, employee or loan officer is for an amount in excess of the aggregate value of the shares and deposits of such director, member or officer then two-thirds of the credit committee and two thirds of the board must approve the loan before it is made and the director, member or officer must not participate in discussions concerning the loan or a vote approving the loan. Such loans must comply with all requirements under the CUA and must

be extended on terms no more favourable than are available to other borrowing members.

- f) An exception to these provisions may be where loans to employees form part of the contract of employment.
- g) A credit union shall, at the time of providing a credit facility to a member, in a written statement, disclose to the member concerned the cost of borrowing. This shall include the interest rate and related fees.
- h) Where a loan extended to a director or member of a statutory committee becomes delinquent the Board will immediately notify him to this effect. The director or member of the statutory committee will be required to resign from the Board or committee if, after having been notified of the delinquency, he fails to remedy the situation within thirty (30) days of the date of notification.

### ***11.1 Delinquent Loans:***

#### Proposals:

- a) Credit unions are required to have adequate systems that enable them to identify problem credits promptly and to make adequate provisions for losses on credit facilities, which should be consistent with the Central Bank's guidelines on Impaired Assets.
- b) Where credit unions are required to make specific provisions for all or part of a credit facility, the facility must be reported net of the specific provision
- c) The Central Bank will have the power to determine the appropriate amount of provisioning that will be adequate
- d) A credit union would not be allowed to accrue interest on personal loans and mortgages delinquent more than 90 days and 180 days respectively. Interest income accrued beyond that period can form part of the credit union's memorandum accounts but should not be recorded as income in the income statement.

#### Rationale:

Loan delinquency across the credit union sector is not uniformly addressed, which has allowed for the inconsistent approach to provisioning of such loans on credit unions' balance sheets. It is imperative that the carrying amounts of credit portfolios in their financial statements adequately represent recoverable values. Credit unions should also ensure that there is timely recognition of identified losses and adequate allowances are made for those losses.

Failure to prudently institute such approaches for impaired assets can lead to inaccurate surpluses being recorded on the income statements of credit unions, which may result in the overstatement of dividend payments to members and increased risk exposures to credit unions.

The adoption of Central Bank's guidelines on loan provisioning is considered a shift in the thinking for credit unions in general, but is warranted, as a more comprehensive approach to loan delinquency is necessary. As a result, credit unions will have a transition period of two years to implement the changes necessary in their operating systems and to familiarize staff with the new measures.

## 12.0 INVESTMENTS

### Proposals:

- a) Permitted investments will include the following and may be subject to such limits as the Central Bank may approve:
  - i) Securities issued or guaranteed by the Government of Trinidad and Tobago;
  - ii) Other domestic securities registered by the Trinidad and Tobago Securities and Exchange Commission such as bonds, equities and mutual funds;
  - iii) Deposits offered by other credit unions or secondary bodies conducting the business of a credit union;
  - iv) Securities and deposits offered by other financial institutions regulated by the Central Bank of Trinidad and Tobago;
  - v) Real estate, subject to limitations laid out in Section 13.2;
  - vi) Any investments or classes of investments other than those described in clauses (a) to (e) that have been approved by the Inspector either generally or specifically upon application by the credit union.

### Rationale:

Credit unions are required to adopt a reasonable and prudent person approach to investments in order to avoid speculative investments and undue risk while obtaining a reasonable return. Therefore, the regulator must have the authority to establish criteria for reviewing and limiting major acquisitions or such investments to which credit unions may be attracted. Where credit unions need to apply for approval of an investment or class of investments, the Central Bank will ensure that responses to applications will be provided in a timely manner.

### **12.1 Substantial Investments**

Credit unions have become involved in various non-financial activities and it is imperative that in its operations, credit unions separate financial activities from non-financial activities. This will reduce the contagion risk posed by engaging in activities

such as retail store operations; non-financial service ventures; real estate and property development. The restriction being imposed also serves to insulate the balance sheet of a credit union from the risks posed by engaging in non-financial activities.

Proposals:

- a) A credit union should not be allowed to hold a substantial investment in other business entities. The Central Bank further proposes that, in aggregate, a credit union's investments in such entities should be restricted in relation to its institutional capital, specifically:
  - i) A credit union's equity investment in an individual entity must be LESS THAN twenty (20) percent of the shares of that one entity *except for a locally regulated financial entity*; and
  - ii) A credit union's **aggregate** equity investment in other entities should not exceed twenty (20) percent of the credit union's institutional capital;
  - iii) Where in the course of satisfying debts due to it, a credit union acquires shares or an ownership interest in an entity that would cause it to exceed any of the limits stated above the credit union must immediately inform the Central Bank of this development. Credit unions would be required to dispose of such shares or ownership interests within two years of acquisition or such additional time as the Central Bank may direct.

## 13.0 PROHIBITED TRANSACTIONS

### 13.1 *Related Parties*

Proposals:

- a) A credit union can only engage in those transactions with a related party that are permitted under the CUA. Transaction between a related party and a credit union should be on terms that are no less favourable to the credit union than would normally apply.
- b) Transactions with related parties include loans to, or guarantees for the benefit of the related party, investment in any securities of the related party, or any other form of exposure to the related party.

Rationale:

Transactions with related parties can pose conflicts of interest to the credit union. It is international best practice to require that where an institution makes loans to a related party this is done on an arm's length basis and that the transactions are closely monitored.

## ***13.2 Real Estate***

At present credit unions own buildings where they conduct credit union business only while some conduct other activities on their premises. Several credit unions are also currently in possession of various properties from which rental income is derived. In other cases, some are engaged in property development for the benefit of their members.

### Proposals:

- a) Real estate held solely for the purpose of conducting the business of a credit union or housing officers or employees will be considered owner occupied property
- b) There will be no restrictions on owner occupied property however a limit of 5% of total assets will be applied to other real estate held.
- c) A credit union will be allowed to provide non-financial services in its owner occupied premises within the following limitations:
  - i) the assets of the non-financial activities are less than or equal to 5.0% of the credit union's asset base;
  - ii) the income generated from the non-financial activities is less than or equal to 10.0% of the gross income of the credit union.
- d) If the non-financial activities being provided exceed the limits stipulated in (a) and/or (b), these premises will, in aggregate, be subject to the limit of 5% of total assets placed on other real estate.
- e) Where real estate holdings exceed the limitation set out above, credit unions have the option of establishing a non-financial cooperative or any other form of business enterprise to hold this real estate as outlined in section 4.1.
- f) Where a credit union acquires land in the course of satisfying debts due to it, such land or any interest in it should not be held for a period longer than five years from the date of acquisition.

### Rationale:

Previously there was consideration to place a restriction on the fixed assets of credit unions inclusive of total real estate holdings. It has been recognized however that in the local environment several credit unions own the buildings that they currently use for the purpose of conducting the business of a credit union and the current market values of such real estate would have exceeded previously proposed restrictions.

The Central Bank has to ensure that the credit union does not however over invest in real estate for investment purposes or to conduct non-financial activities. This is necessary to reduce the contagion risk posed by engaging in such activities as this serves to insulate the credit union's balance sheet from these risks. The acquisition and

use of real estate for non-credit union business are therefore being limited to prevent the credit union from exposure to fluctuations in the real estate market.

### ***13.3 Credit Exposures***

#### *Proposal:*

It is proposed that a credit union may incur credit exposures to a maximum of twenty-five (25) percent of its total institutional capital to any single entity, individual member, or related party or parties. Exceptions to this limit will apply to an exposure that is:

- i) fully guaranteed by the Government of Trinidad and Tobago;
- ii) fully guaranteed by a sovereign state other than the Government of Trinidad and Tobago, with an investment grade rating from a credit rating agency approved by the Central Bank;
- iii) fully secured at all times in cash in Trinidad and Tobago dollars or other currencies readily convertible to Trinidad and Tobago dollars delivered to the credit union.

#### *Rationale:*

Credit exposure can arise from loans, investments and participations and refers to the amount of risk assumed by the credit union through these activities and is measured by the extent of losses that would result from the failure of a counterparty to honour his obligations or that may result from the realization of assets. A limit is therefore necessary to mitigate the risks arising from excessive credit exposure to any single entity, individual member, or related party or parties.

### ***13.4 Branches***

- a) A credit union's membership may decide to open or establish branches at any place in Trinidad and Tobago unless limited by the Central Bank. The Central Bank must be notified in writing of the proposed establishment of the branch.
- b) A credit union wishing to conduct the business of a credit union outside of Trinidad and Tobago will be required to obtain the approval of the Central Bank.

### ***13.5 Dividends***

#### *Proposal:*

- a) The directors of a credit union may declare or propose a dividend only if:



- i) payment will be made from realized, ordinary, undivided surplus;
  - ii) any impairment of the institutional capital has been corrected;
  - iii) all allowances for impaired assets and loan losses have been fully funded;
  - iv) all prior-year losses have been written off;
  - v) the accounts have been audited
- b) Any other distributions from equity will be subject to the same restrictions outlined above.

Rationale:

Sound business practices dictate that a credit union should not pay dividends or make any distributions from equity which may impair their capital. Conditions for distribution of dividends prevent credit unions from impairing their capital and negatively impacting their stability and soundness in general.

***13.6 Exceptions to the Restriction on Dividend Payments and other Distributions from Equity during the Transition Period***

Proposal:

A credit union that has not met the requirements as stated in (i) through (v) in section 13.5 may be allowed, for a period of three years after the coming into force of the Act, to make a distribution from equity including a dividend or bonus under the following four conditions:

- i) the accounts have been audited;
- ii) the Central Bank has approved a plan for the credit union to achieve compliance within 3 years and has determined that the credit union is meeting its annual targets as outlined in the plan; and
- iii) the credit union's level of institutional capital which was initially below the minimum, does not suffer a decline in its actual level during the period; or
- iv) the credit union's level of institutional capital is maintained at least at the minimum statutory level during the transition period;

Rationale:

While sound business practices dictate that a credit union should not pay dividends or make any distributions from equity which may impair their capital, the Central Bank recognizes that dividend payout is an important function to credit union members and would provide for growth opportunities during the transition period.

## 14.0 REGULATION AND SUPERVISION

### *14.1 General Powers of the Central Bank*

As financial regulator, the Central Bank has at its disposal a wide range of supervisory and regulatory tools with which to ensure the safe and sound operation of credit unions. As part of its supervisory process, the Central Bank will undertake various activities geared toward understanding the operations of credit unions and the risks that they face; ensuring their compliance with legislation and adherence to best practice; and the continuous monitoring of credit unions' financial indicators.

#### Proposal:

The Central Bank has the power to:

- i) issue regulations;
- ii) issue guidelines;
- iii) set prudential standards;
- iv) set general authorization requirements;
- v) impose sanctions and fines for non-compliance with the CUA;
- vi) require statutory filings of financial statements and other statistical and operational data;
- vii) require access to all records and documents of the credit union;
- viii) request information of any officer, employee or director of the credit union;
- ix) require a credit union to take remedial action where the credit union is in breach of the CUA or engages in an unsound practice; and
- x) approve, vary, restrict and revoke an Operating Certificate
- xi) conduct on-site and off-site examinations.

#### *14.1.1 On-site Examinations and Off-site Monitoring*

Two critical components in the exercise of the powers of the Central Bank outlined above are off-site monitoring and on-site examinations. Off-site monitoring includes the gathering of financial and other data as specified and in the form indicated by the Central Bank. The data once analyzed, gives an indication of the performance of the

credit union and may signal red flags such as declining earnings, capital and liquidity or rising loan delinquency. This analysis will be performed on an ongoing basis and is used to inform the areas of focus of an onsite examination. Where off-site monitoring reveals a major deficiency in the operations of a credit union, this would automatically trigger an on-site examination.

The Central Bank in its normal course of operations will conduct on-site examinations of credit unions. A credit union will be informed in writing prior to the initiation of an on-site visit and will be asked to submit information ahead of time to facilitate this process. A team of examiners will then visit the credit union's office to conduct the examination. Examiners will hold meetings with the management of the credit union throughout the course of the examination and will from time to time request additional information as needed. Officers of the credit union are expected to fully comply with all requests for information as failure to do so will constitute a violation of the Act. A report documenting the findings of the examination and recommending corrective action if needed will be issued to the credit union and copied to the Minister of Finance upon completion of the process.

## ***14.2 Information Requirements***

Access to comprehensive and accurate information on the financial condition of regulated institutions is a critical component of the regulatory process. The Central Bank as regulator must also be in a position to assess at all times whether credit unions are operating in accordance with the law. The reporting and other information requirements outlined will also be of benefit for research purposes as this will mean that reliable and up-to-date data on the sector will be available. This will feed into the macro-economic financial sector indicators and thus give a more complete picture of the financial sector and its performance and ultimately the financial stability of the country.

### *Proposals:*

- a) Credit unions will be required to submit to the Central Bank periodic returns on various aspects of their operations. The Central Bank will determine the frequency and form of these submissions, which will cover, *inter alia*:
  - (a) assets and liabilities;
  - (b) loans, including delinquency; and
  - (c) revenue and expenses.
- b) The Central Bank, where it is of the view that circumstances so warrant, may require a credit union to provide any additional information, including special reports, any information on non-financial activities or to report more frequently on its operations.

### ***14.3 Audited Financial Statements***

#### Proposals:

- a) Credit unions must submit up-to-date audited financial statements in order for the Central Bank to assess the financial condition of the credit. This would mean that all outstanding audited financial statements would need to be prepared and submitted to the Central Bank within 6 months of the coming into force of the Act.
- b) Annually, within three months of the close of its financial year, every credit union must submit to the Central Bank financial statements of its operations, duly audited by an auditor..
- c) Financial statements must include:
  - (i) a statement of comprehensive income;
  - (ii) a statement of financial position;
  - (iii) a statement of cash flows; and
  - (iv) a statement of changes in equity (appropriation account).
- d) Any compensation including but not limited to general remuneration, honorarium or fee paid to a director of a credit union shall be disclosed annually in the credit union's audited financial statements.
- e) All submitted audited statements must be signed by the President and Treasurer of the credit union. If upon examining these statements the Central Bank determines that there is some risk to the safety and soundness of the credit union it will, as a first step, consult with the credit union and propose measures to prevent any further financial deterioration.

#### Rationale:

Audited financial statements are an important source of financial information for members of credit unions as well as the Central Bank and essentially reflect a true and fair view of the financial position of the credit union. The preparation of audited financials is also a necessary condition for the payment of dividends annually.

An important consideration for the Central Bank in setting out reporting requirements for the institutions under its supervision is that all reporting institutions should conform to established and internationally recognized reporting standards. These standards may change over time in line with evolving best practice and with changes in the financial environment. These standards also form an acceptable basis for public disclosure.

The statement of changes in equity (an appropriation account) accompanies the financial statements of some credit unions to show dividend payments, payment of honoraria and movement to reserves for example. This statement has been included as an additional submission of the financial statements to ensure compliance with International Accounting Standards as required by the Regulator for transparency and completeness of accounts.

## ***14.4 Preventive and Corrective Measures***

### Proposals:

- a) The Central Bank may recommend preventive and corrective measures where, based on information available to it, it considers that a credit union may be operating in an unsafe or unsound manner, may be illiquid or insolvent, or is in violation of the Act.
  
- b) For the purposes of this Act, a credit union that does not meet the ratio of 100% when the Solvency Test, as outlined in the Second Schedule, is applied will be subject to corrective action by the Central Bank;
  
- c) A credit union that meets the ratio of 100% when the Solvency Test is applied but—
  - i) is unable to meet its obligations as they generally become due; or
  - ii) has ceased paying its current obligations in the ordinary course of business; or
  - iii) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all its obligations;may be subject to corrective action by the Central Bank .
  
- c) The credit union would be expected to comply with the recommendations of the Central Bank. If it fails to do so and, having been given an opportunity to be heard, does not provide a valid reason the Central Bank may then have recourse to its enforcement powers, including the power to issue directions and administrative orders.

## ***14.5 Directions***

### Proposals:

- a) Where the Central Bank is of the opinion that a credit union's activities or its failure to take certain actions may:
  - i) violate or potentially violate the CUA,
  - ii) threaten the safety and soundness of the credit union,
  - iii) result in undue loss of members' shares and deposits, or
  - iv) threaten the financial system of Trinidad and Tobago,

- b) The Central Bank may issue a direction to the credit union including a direction requiring the board of the credit union to convene a special board meeting at which the Central Bank will be present to address these issues.
- c) Directions may also be issued where:
  - i) the directors and officers of a credit union fail to meet or maintain the fit and proper criteria
  - ii) the Central Bank is of the opinion that the credit union is illiquid or insolvent.
- d) The Central Bank may issue a direction to a credit union, its directors, officers, employees and agents requiring the person to whom it is addressed to:
  - i) comply with the CUA;
  - ii) give an undertaking to the Central Bank to take such corrective action as the Central Bank may require;
  - iii) take certain steps or refrain from adopting or pursuing a particular course of action;
  - iv) increase capital and provide additional liquidity;
  - v) impose limitations on the activities of the credit union, or constrain, or place conditions on the conduct or promotion of its business; and
  - vi) inform the members that a direction has been issued.

## ***14.6 Direction for removal***

### Proposal:

- a. The Central Bank will have the power to remove any officials holding decision-making authority by issuing a direction for removal, which may apply to any director or officer or to the entire board. Any such action on the part of the Central Bank would need to be communicated immediately to the membership of the credit union.
- b. It will be the responsibility of the board to take immediate steps to fill the vacancy left by the removal of a director.
- c. Where the direction affects the entire board of the credit union the Central Bank will ensure arrangements for the continuity of operations. This will be done in collaboration with the Commissioner.

### Rationale:

As part of its regulatory mandate the Central Bank has a responsibility to ensure as far as possible that persons holding decision-making authority in credit unions are suitable to hold office and will act in compliance with the law.

## ***14.7 Winding up of a Credit Union***

### Proposals:

- a) The power to wind up a credit union will reside with the Central Bank and an application must be made to the court to initiate any winding up action.
- b) Where all attempts at rehabilitation have failed the Central Bank, in its discretion, may determine whether a credit union should be involuntarily wound up.
- c) The Central Bank may also decide to wind up a credit union where it deems that the credit union is insolvent or where the Bank has revoked the Operating Certificate of the credit union.
- d) Where the Central Bank under the CUA decides to wind up a credit union the Central Bank will inform the Commissioner to this effect and wind up the credit union. The Commissioner will de-register a credit union that has been wound up by the Central Bank.
- e) Where the Commissioner under the CSA decides to de-register a credit union, he will communicate this decision to the Central Bank and the Central Bank will wind up the credit union in such manner and within such period of time that best protects the interests of members and of the financial system of Trinidad and Tobago.

## ***14.8 Voluntary Liquidation***

### Proposals:

- a) A credit union is permitted to voluntarily wind-up its business affairs subject to prior approval by the Central Bank.
- b) Where a credit union passes a resolution for voluntary winding-up, it shall within fourteen days, give notice of the resolution by advertisement in the *Gazette* and in at least two daily newspapers published and circulated in Trinidad and Tobago.

### Rationale:

Central Bank approval of a voluntary wind-up is to ensure that winding up does not pose undue risk to members' shares and deposits or adversely affect public confidence in the financial system of Trinidad and Tobago.

Public notification of a winding up is necessary so that all parties who may possibly be affected have an opportunity to become aware of the situation.

### ***14.9 Order of Distribution Upon Winding-up***

The Central Bank proposes that the order of distribution on the winding-up of a credit union be similar to what obtains in the Companies Act Chap 81:01. This follows current practice.

The Companies Act, under Section 435(1) ranks the preferential payments as follows:

1. All rates and taxes due and payable within 12 months of the relevant date.
2. All wages and salaries for employees (not a director) for services rendered during four months prior to the relevant date
3. Severance and terminal benefits due to employees (not directors) up to 2 months salary.
4. Rights transferable under the Workman's Compensation Act.

### ***14.10 Mergers and Transfers***

For various reasons two or more credit unions may choose to merge their operations and form a new credit union. Alternatively, a credit union may choose to transfer its assets and liabilities to another existing credit union. The movement of assets and liabilities from one credit union to another existing credit union is a transfer. In either case the decision would be a purely voluntary one approved by the membership of the participating credit unions but approval by the Central Bank will also be required.

In the case of a merger the boards of the participating credit unions will need to agree on a plan and have it approved by their respective memberships. Once this is done the participants will give notice of the merger or transfer and provide the plan to the Central Bank.

Upon approval of the merger or transfer by the Central Bank, all property, property rights and members' interest of the merging credit unions shall vest in the continuing credit union without any instrument of transfer. All debts, obligations and liabilities of the merging credit unions shall be deemed to have been also assumed by the continuing credit union. The rights and privileges of the members of the merging credit unions shall be preserved and more particularly set out in the merger agreement.

Where credit unions merge during the transition period to form a new single credit union, the times established upon the passage of the Act for existing credit unions to come into compliance, will continue to apply to this new credit union.

### ***14.11 Offences and Penalties***

Membership control of credit unions is an important cooperative principle which imposes on members the collective responsibility to be vigilant and to ensure that the



highest standards of management and good governance are maintained. The failure to maintain such vigilance could result in losses to the credit union through mismanagement or malfeasance on the part of officers or directors or through regulatory penalties arising from infractions of the CUA.

#### Civil Money Penalties and Fines

##### Proposal:

The Central Bank will have the power to assess and impose civil money penalties on credit unions for certain breaches of the CUA.

##### Rationale:

Civil money penalties, as an intermediate enforcement tool, can be a useful alternative to costly litigation through the court system.

An example of a breach that may attract the imposition of civil money penalties is the late or inaccurate submission of statutory filings, audited financial statements or other information requested by the Central Bank. Interest would be payable on overdue penalties. A credit union may challenge the imposition of a civil money penalty by appealing to a Judge in chambers.

#### Criminal Penalties

##### Proposal:

Any breach of the Credit Union Act will be considered an offence and persons found guilty would be liable on summary conviction to fines of varying amounts and imprisonment. Very serious offences under the Act such as perpetrating a fraud on depositors or preventing the Central Bank from having access to the books of a credit union will attract higher fines up to a maximum of \$500,000 in addition to imprisonment. Where no specific fine has been identified a general fine of \$30,000 and imprisonment of two years would be applicable.

### ***14.12 Appeals***

##### Proposal:

Appeals of decisions of the Central Bank by credit unions must be made to a Judge in Chambers.

##### Rationale:

It is important that credit unions have recourse to an avenue of appeal where they are aggrieved by certain decisions of the Central Bank, such as refusal to grant an

Operating Certificate or revocation of an Operating Certificate and the imposition of any order or direction.

## **15.0 SECONDARY BODIES**

Secondary bodies currently provide developmental or financial services to credit unions inclusive of granting loans, accepting deposits and issuing shares. For the purposes of this Act a secondary body is a second tier society whose registered members are societies and whose objects include the facilitation of the operations of credit unions.

### *Proposals:*

- a) Any secondary body determined to be carrying on the business of a credit union would need to be issued an Operating Certificate by the Central Bank to conduct these activities. As such secondary bodies conducting the business of a credit union will be regulated under the CUA in the same manner as credit unions and may be subject to special requirements as determined by the Central Bank.
- b) Secondary bodies regulated by the Central Bank will be subject to the same transitional periods as credit unions.

## **16.0 EXEMPTED SOCIETIES**

Currently there are societies, other than credit unions, which issue shares and/or grant loans to their members as one of their primary objects but which are not considered to be conducting the business of a credit union.

### *Proposal:*

The Minister of Finance may, by order, exempt any such society from the provisions of this Act or determine that the Act shall apply to such a society.

## **17.0 PRUDENTIAL CRITERIA**

The imposition of prudential criteria promotes the financial soundness of credit unions and so helps protect the members by ensuring higher quality risk management and capital management processes. Prudential standards are also intended to safeguard credit union members' savings from losses and to ensure credit unions function in a sound manner.

## Statutory Requirements:

- a) Credit unions shall maintain a minimum level of institutional capital equivalent to eight (8) percent of total assets.
- b) Credit unions will be allowed a borrowing limit of 8% of the total assets with the option (subject to certain conditions) to borrow up to a maximum of 10 percent of total assets.
- c) Credit unions may incur credit exposures to a maximum of twenty-five (25) percent of its total institutional capital to any individual member, single entity, or related party or parties,
- d) A credit union's equity investment in an individual entity must be LESS THAN twenty (20) percent of the shares of that entity.
- e) A credit union's **aggregate** equity investment in other entities should not exceed twenty (20) percent of the credit union's institutional capital.
- f) Credit unions shall maintain a minimum liquid assets ratio of fifteen (15) percent in relation to total liabilities. Where members' withdrawable shares are reported as equity, those shares shall be taken into consideration in calculating the liquidity ratio.
- g) A credit union's holdings of non-owner occupied real estate shall not exceed five (5) percent of its total assets.
- h) Treatment of Interest: Once a loan is more than 90 days delinquent for loans and more than 180 days delinquent for mortgages, interest shall not be included as income in a credit union's account in respect of loans and mortgages for the period specified above where: –
  - i) the contractual payment is not made; or
  - ii) a part of the contractual payment is outstandingunless the loan, including the accrued interest, is fully secured and is in the process of collection or is 100 per cent secured after set-off of deposits/shares.
- i) The minimum prudential requirements outlined may be subject to variation depending on the risk characteristics and complexity of the business of the credit union.

***17.1 Other Requirements: Effective Financial Structure***

- |                                       |                   |
|---------------------------------------|-------------------|
| a) Investments/ Total Assets          | Between 20% - 40% |
| b) Net Loans/ Total Assets            | Between 60% - 80% |
| c) Operating Expenses/ Average Assets | Between 3% - 10%  |

## 18.0 TRANSITION PERIOD

A transition period is essentially a period which allows the credit union to come into full compliance with the Act. This period will apply only to those credit unions that are not in compliance with the Act when it comes into effect. The allowable time for transition will range from six (6) months to a maximum of five (5) years for certain provisions.

### Proposal:

a) The transition periods being proposed are outlined in the following table:

Section	Provision	Transition Period
4.0	Credit unions carrying on any activity other than business of a credit union e.g. non-financial activities	5 years
6.2	Mandatory term limits for board members	18 months
6.2	Minimum qualification for board members and Fit and Proper requirements	2 years for existing board members; immediate for new board members
6.5	Appointment of External Auditor	2 years
8.1	Institutional Capital	3 years
9.0	Borrowings	2 years
10.0	Liquidity	2 years
12.1	Substantial Investments	5 years
13.2	Real Estate	5 years
13.3	Credit Exposures	5 years
13.5	Dividends or distributions from equity pursuant to a plan approved by the Central Bank	3 years
14.3	Outstanding Audited Financials	6 months

b) **All other provisions of the Act will apply with immediate effect upon passage of the Act.** Should a credit union remain non-compliant with any provisions of the Act beyond any applicable transition periods, the Central Bank may take any action considered appropriate under the CUA.

### *18.1 Other Considerations*

The Central Bank of Trinidad and Tobago recognizes that some credit unions may experience challenges in adopting some of the proposals outlined in the policy proposal document. In this regard, the Central Bank is prepared to work with these credit unions during the proposed transition period and will therefore do the following:

- Conduct explanatory sessions for the sector on aspects of the new legislation;
- Conduct workshops on the regulatory reporting requirements and regulation under the new legislation;
- Support the credit unions in their transition plans to come into compliance;
- Work with the secondary bodies and office of the Commissioner to identify training for directors in governance and in understanding financial statements of credit unions.

The Central Bank will tailor its supervisory efforts and degree of review based on the size, complexity, risk profile and business model of the credit union. The bigger credit union, with a more complex business model, will require more supervisory efforts on the part of the Central Bank.

## 19.0 FIRST SCHEDULE: BUSINESS OF A CREDIT UNION

	<b>CLASSES OF BUSINESS</b>	<b>SERVICES AND ACTIVITIES</b>
1.	<b>Share Issuance</b>	Issuing shares to members, on such terms and conditions as are prescribed in the regulations and standards approved by the board of directors of the credit union.
2.	<b>Deposit Taking*</b>	Accepting deposits from members, on such terms and conditions as are prescribed in the regulations and standards approved by the board of directors of the credit union.
3.	<b>Loans**</b>	Granting of loans and other credit to members on such terms and conditions as are prescribed in the regulations and standards/approved by the board of directors of the credit union.
4.	<b>Investment**</b>	Credit union commits its collectively owned resources and the investment gains or losses accrue to its own account.
5.	<b>Mortgage Business</b>	Mortgage lending
6.	<b>Confirming and Acceptance</b>	Confirming, accepting import and export bills for financing
7.	<b>Trust Business</b>	Management of trust funds, acting as trustee or contractual trust, executor or administrator, administration of pension funds and retirement plans.
8.	<b>Transaction services</b>	Ability to directly or indirectly offer credit cards, and debit cards.
9.	<b>Brokerage</b>	Acting as a broker or as a commissioned agent for any other financial institution, except within the securities industry.
10.	<b>Other Financing Services</b>	Loan syndication, acceptance credit, project financing, foreign exchange financing and inter-credit union financing

## 20.0 SECOND SCHEDULE

### Technical Solvency Test for Credit Unions

Line item	YEAR
<b>ADJUSTED ASSETS:</b>	
Total assets	
<b>Add:</b> Allowance for loan losses	-
<b>Total adjusted assets (A)</b>	
<b>ADJUSTED LIABILITIES:</b>	
Total liabilities including contingent liabilities and withdrawable shares	
<b>Add:</b> 100% of loans delinquent $\geq$ 360 days	
<b>Add:</b> 50% of loans delinquent 180-359 days	
<b>Add:</b> 20% of delinquent loans 90-179 days	
<b>Add:</b> Problem Assets <sup>4</sup>	
<b>Less:</b> Members withdrawable shares and deposits	
<b>Total adjusted liabilities (B)</b>	-
<b>NET VALUE OF ASSETS ( A-B)</b>	-
<b>Solvency =</b> (Net Value of Assets / Total Members Deposits + Withdrawable Shares) x 100	-

<sup>4</sup> Problem Assets are any other assets identified as having faced or which will face a diminution in value and for which no provisions have been made. The value will be the loss incurred or expected from the asset.



## 21.0 APPENDIX I

### *Consequential Amendments to the Central Bank Act*

The proposals in the policy document would also require related and consequential amendments to the Central Bank Act Chapter 79:02 to achieve the following:

- a. revision of the definition of “institution” to remove reference to “co-operative societies” and replace with “credit unions”;
- b. a clear description of the general responsibilities and objectives of the Central Bank in respect of its regulation of credit unions;
- c. the strengthening of the legal protection for the Central Bank and its staff against lawsuits with regard to any act or omission while discharging their duties in good faith;
- d. the sharing of information under the Credit Union Act notwithstanding the confidentiality provisions of Section 56 of the Central Bank Act.

## 22.0 APPENDIX II

### ROLE OF THE COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT WITH RESPECT TO CREDIT UNIONS UNDER THE CSA

No.	Role	Details
1	Registration and De-registration of Credit Unions	<p>The Commissioner is responsible for</p> <ul style="list-style-type: none"> <li>• Registration,</li> <li>• Deregistration</li> <li>• All related constitutional matters include inter alia:               <ul style="list-style-type: none"> <li>» Approval of by-laws (the Commissioner retains this role under the Co-operative Societies Regulations – Regulations section 50 (1), (2) (3) and (4) and the Model By-law produced by the Division.</li> <li>» Adherence to co-operative principles</li> <li>» Minimum number of members required to establish a credit union</li> <li>» Rights of the members</li> <li>» Election of officials</li> <li>» By-laws regarding name, address and objects</li> <li>» Election of officers</li> <li>» Election of Supervisory Committee &amp; Credit Committee</li> <li>» Conducting of Annual General Meetings</li> </ul> </li> </ul>
2	Issues relating to membership	<p>The Commissioner is responsible for all matters pertaining to membership. The CSA addresses issues which include:</p> <ul style="list-style-type: none"> <li>• the bond of the society</li> <li>• Qualification for membership</li> <li>• voting rights of members</li> <li>• rights and liabilities of infant members</li> <li>• rights and limitations of membership</li> </ul>
3	Disputes	<p>The Commissioner shall remain responsible for disputes between a credit union and its members. The Credit Union Act will not alter the existing Powers of inquiry by the</p>

No.	Role	Details
		Commissioner. The Co-operative Societies Act, Chapter 81:03 Part VII, section 67 – Settlement of disputes and section 68 – Case stated on question of law.
4	Conducting Annual General Meetings and the power to call Special Board and General Meetings	<p>The Regulations of the CSA lay out rules pertaining to notice of a meeting;</p> <ul style="list-style-type: none"> <li>• convening of an AGM;</li> <li>• conditions of a Special General Meeting;</li> <li>• voting at meetings</li> <li>• responsibilities of the Chairman;</li> <li>• minutes of meetings and</li> <li>• elections at the AGM.</li> </ul> <p>The Commissioner is responsible for convening Special General Meetings and may be present at Annual General Meetings and Special General Meetings called by the Board of the respective credit union.</p>
5	Monitoring and requiring compliance with requirements of the CSA	The Commissioner is empowered to require compliance with constitutional and registration matters under the CSA and compliance with any resolution/order arising out of dispute settlements.
6	Offences and Penalties	The CSA addresses offences relating to the willful neglect or refusal to comply with requirements of the CSA or the Regulations; contravention of by-laws; disobeying a summons, order or direction lawfully issued under the CSA or the Regulations. These offences will be applied in matters relating to registration, constitution and dispute resolution of credit unions as all offences of a financial nature will be covered in the CUA. The Commissioner will be responsible for investigations and to institute proceedings.
7	The Board and Committees and Election of Members to the Board and Committees	The Regulations of the CSA lay out conditions for the election of the Board; duties of the Board; election of the Credit, Supervisory and other Committees. The Commissioner has an oversight responsibility, except where specifically stated.
8	Development of credit unions	Note for Cabinet dated June 17, 2005 paragraph 18 stated that <b>“The developmental aspect of credit union</b>

No.	Role	Details
9	Supervision in respect of adherence to co-operative principles	<b>Principles of cooperatives</b> <ul style="list-style-type: none"><li>• Voluntary and open membership</li><li>• Democratic member control</li><li>• Member economic participation</li><li>• Autonomy and independence</li><li>• Education, training and information</li><li>• Co-operating among cooperatives</li><li>• Concern for the community</li></ul>

## 23.0 APPENDIX III

In light of this amended role of the Commissioner with respect to credit unions the following sections of the CSA and Regulations will be dis-applied:

**Summary of Sections of the Co-operative Societies Act and Regulations  
which have to be dis-applied in the CSA with respect to credit unions  
or which have to be cross-referenced in the Credit Union Act**

Section of the CSA	Description of the Section	Action	Rationale
15	Limitation on interest of member of a society with limited liability	Disapply and carry over to CUA	The Central Bank views this as a prudential issue as there are risks to one member having a substantial shareholding in the credit union. From a prudential standpoint, a member's shareholding should be limited to avoid the risks which a large withdrawal of shares poses to the safety and soundness of the credit union. The 1/5 limit will be carried across to the CUA.
18 (1) (2)& (4)	Commissioner may cancel registration of society	Disapply and carry over to CUA	The CUA empowers the Central Bank to be responsible for winding up credit unions. The CUA will have to state that the Commissioner will direct the Central Bank to wind up a credit union for reasons under the CSA prior to cancelling the credit union's registration.
18 (3)	Commissioner may cancel registration of society	To be addressed in an MOU	The CUA cannot speak to the Commissioner's power if this subsection is dis-applied in the CSA. The process for cancellation will be addressed in an MOU with the

Section of the CSA	Description of the Section	Action	Rationale
			Commissioner.
28	Loans by society to member	Disapply and carry over to CUA	Since CBTT has been mandated to regulate the financial activities of credit unions and one of the principal activities of a CU is the granting of loans, the CUA will now have to address the power of credit unions to grant loans. An amendment will have to be made under the CUA to reflect the FIA rather than the Banking Act.
39	Restriction on transfer of shares or interest	Dis-apply sub-section 1.	Consistent with the dis-application of section 15.
42	Liability of past member and estate of deceased member for debts of society	Dis-apply & carry over to CUA.	This provision has implications for the liquidation and winding-up process and therefore needs to be included in the CUA since the Central Bank will be responsible for the winding up of credit unions.
43	Restriction on loans	Dis-apply 43 (1) & (2)  Dis-apply 43 (3) & carry over to CUA.	The Commissioner will no longer be responsible for permitting the credit union to do these activities.  For prudential reasons related party loans need to be closely monitored and the provisions in this section will still apply under the CUA. The sector also indicated that this system has worked well and they would like to continue with this procedure.
44	Society may receive deposits and loans	Dis-apply	This prevents credit unions from receiving deposits from non-members and the CUA already restricts the credit union to receiving deposits from its members only and allows credit

Section of the CSA	Description of the Section	Action	Rationale
			unions to borrow up to a specific limit. Dis-applying this section will also be consistent with Regulation 50 (3) (e).
45	Investment of funds	Dis-apply	The Commissioner will no longer be responsible for approving the investment of credit union funds. This issue has also been adequately addressed under the CUA.
46	Restriction on dividend	Dis-apply	This will no longer be a responsibility of the Commissioner and the CUA establishes criteria which the credit union must meet before it can declare and pay a dividend.
47	Reserve fund	Dis-apply	This requirement to maintain a reserve fund has been eliminated for credit unions. Credit unions will now be subject to a capital requirement under the CUA.
48	Restriction on distribution of surplus	Dis-apply	This surplus provision will no longer be applicable as the Reserve Fund is no longer required and the CUA covers conditions for the payment of dividends.
51	Audit	Dis-apply	The Commissioner will no longer be responsible for auditing the accounts or appointing an auditor to audit the accounts of a credit union.
58	Winding up	Dis-apply	This section would need to be introduced into the CUA and modified to provide for the Commissioner to direct the Central Bank to wind-up. The assets and liabilities of a credit union that is being wound up will no longer vest in the Commissioner but in the liquidator.

Section of the CSA	Description of the Section	Action	Rationale
59	Society may be wound up if membership is reduced	Dis-apply	The Commissioner will no longer be able to direct the winding up of a society. It is recognized that the Commissioner may be able to require the Central Bank to wind up a credit union where the membership has fallen below 12 and a provision to this effect will be introduced into the CUA.
60	Power of Commissioner on issuing a winding up order	Dis-apply	Given that the CUA will provide for the Central Bank winding credit unions, the Commissioner will no longer fulfill this role.
61	Powers of a liquidator	Dis-apply	This section does not need to be taken up in the CU Bill as the powers of the liquidator will follow the procedures outlined in the Companies Act
62	Effect of cancellation of registration	Dis-apply	The Commissioner will direct the Central Bank to wind up a credit union and then he will de-register the credit union. However the procedure for winding up under the CUA will mean that this is no longer relevant
63	Bar of action in reconstruction, winding up and dissolution matters	Dis-apply & carry over to CUA	This provision to be included in the CUA with modifications.
65	Power of Commissioner to surcharge officers, etc., of registered society	Dis-apply & carry over to CUA outlining it as an offence and stating the penalties	This section extends to the committing of an offence, which occurs during the process of winding up. The Commissioner is given special powers here to enquire into the conduct of the person and gives him the power to make a judicial determination and order the person to repay monies. However, we believe that



Section of the CSA	Description of the Section	Action	Rationale
			<p>this determination should be left to the Court or its representative. Stipulation will be placed in the CUA to establish it as an offence for any member of management and officers, past or present to misappropriate funds. The application will now be to the Court and not the Commissioner so that the order for repayment and related interests becomes an order of the Court. The current wording in the CSA does not provide a clear determination as to what will occur if the order is disobeyed. If the penalty is criminal prosecution, the matter still has to go back to the Court.</p>
66	Attachment of property	Will be addressed in MOU	<p>The reference to section 59 as well as disputes being referred to the Commissioner seem to be appropriately dealt with in the CSA but the reference to section 65 seems to be something for the CUA because it will be the court appointed liquidator and no longer the Commissioner enquiring into fraudulent activities.</p>
81 (f)	Regulations to provide for the writing off of bad debts	Dis-apply	<p>Provisions will be made in the CUA with respect to the provisions for bad debts and this is a matter of prudential importance for the Central Bank.</p>

Regulation of the CSA	Description of the Regulation	Action	Rationale
14	Limit to liability	Disapply	A credit union does not accept deposits from non-members under the CUA. The section also gives powers to the Commissioner to approve a maximum liability for borrowings, which will no longer apply under the CSA as a borrowing limit is already included in the CUA to accommodate a maximum liability for credit unions. <b>However, a further enquiry is required for a maximum liability on deposits.</b>
29	Borrowing powers of Board	Disapply	Borrowing limits are already in place under the CUA and as such this will no longer apply under the CSA
32	Bad debts	Disapply	Given that this is a prudential issue that is already catered for under Other Prudential Ratios, it is being removed from the CSA. We recognize that this removes the right of the membership to vote on the writing off of a bad debt, however, CBTT believes that the writing off of debts relates to the safety and soundness of a credit union.
34	Loan to be approved by Board or committee	Disapply and reintroducing in CUA	This requirement is seen as impractical for larger credit unions which may have challenges in convening a credit committee or the board to approve loans on an almost daily basis. Such credit unions have officers with an assigned limit for loan approvals. Additionally, this is already captured in the PPD where the Board or Credit Committee can approve loans and a loan approval process should be in place.
35	Application for loan	Disapply	The CUA outlines the requirements that the Board should ensure are included when approving policies for the granting of loans. These requirements are considered adequate to replace those outlined in the CSA

36	Approval of loan	Disapply (only reintroduce Section 36(2) but with an amendment omitting the Commissioner and his staff)	The detailed considerations outlined in Section 36(1) will not be included under the CUA as it leads to micro-management. Our onsite procedures will mitigate these risks and ensure that proper procedures are in place for the approval of loans. The requirement under Section 36(3) is already outlined under the CUA. A section on secrecy and the disclosure of information by a credit union member will be included in the CUA
37	Granting of loans	Disapply	The requirement under this Section will be addressed under the CUA. Regulation 40 which was referenced will remain applicable for credit unions.
38	Purpose of loans	Disapply	The CUA outlines those persons that may approve loans as outlined in Section 38(1). Enforcement of Section 38(2) may be difficult in the event that proceeds of a loan have been used for purposes otherwise stated. A credit union should be able to address this deficiency in its loan agreement. Moreover, the regulations in the CSA do not give any additional statutory remedy to the credit union.
39	Notification of approval to borrower	Disapply	This section is procedural in nature and is not considered applicable.
42	Restriction on loans to defaulters	Disapply	This is seen as procedural and should be left to the credit union to decide on the manner in which it treats with its delinquent members.
47	Reserve fund	Disapply	A Reserve Fund is not required under the CUA and is therefore not applicable.
48	Audit of accounts	Disapply	The accounts of credit unions will no longer be audited by the Commissioner and would now be done by approved auditors.
49	Supervisory and Audit Fund.	Disapply	This section only applies to societies whose accounts have been audited by the Commissioner. The accounts of credit unions will

			no longer be audited by the Commissioner but rather by approved auditors.
56	Procedure on liquidation	Disapply	This section does not need to be taken up in the CUA as the powers of the liquidator will follow the procedures outlined in the Companies Act.
57	Liquidator to forward records to Commissioner	Disapply and reintroduce in the CUA with amendments	Reference is made to the Commissioner and hence all requirements would not apply. Amendments will be made for the liquidator to submit <b>all financial records to CBTT.</b>