

# **THE CREDIT UNIONS BILL, 2011**

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union comprising the directors of the credit union;

“business of a credit union” means the provision of the issue of shares; and the investment of funds by means of loans and investments and any of the activities listed in the First Schedule to this Act; First Schedule

“affiliate of a credit union” means an entity where more than fifty per cent of the membership and governance structure of that entity is the same as that of the credit union;

“by-laws” means the by-laws of a credit union;

“Central Bank” or “Bank” means the Central Bank of Trinidad and Tobago established under the Central Bank Act; Chap. 79:02

“compliance directions” means directions issued by the Inspector;

“Commissioner” has the meaning assigned to it pursuant to the Co-operative Societies Act; Chap. 81:03

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

- (a) exercise more than fifty per cent of the voting rights at any meeting of shareholders of a company or unincorporated body excluding a credit union;
- (b) elect a majority of the directors of a company or unincorporated body excluding a credit union;
- (c) ensure that the business and affairs of a credit union, company or unincorporated body is conducted in accordance with his wishes; or
- (d) exercise dominant influence over the conduct of the business and affairs of a credit union, company or unincorporated

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

“credit committee” is the credit committee as defined in the Co-operative Societies Act;

“credit exposure” means –

- (a) the amount at risk arising from the extension of credit by a credit union or arising from investments including equities, guarantees, participations and acceptances made by a credit union; and
- (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;

“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 and which is registered under the Co-operative Societies Act;

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

“designated authority” has the meaning assigned to it in the Financial Intelligence Unit of Trinidad and Tobago Act;

Act No. 11 of  
2009

“entity” means a body corporate wherever incorporated, a society with limited liability, a trust, a partnership, a fund or an unincorporated organisation;

“existing credit union” means a credit union registered under the Co-operative Societies Act immediately before the coming into operation of this Act;

“fit and proper criteria” means the criteria listed in the Second Schedule to this Act;

Second Schedule

“Governor” means the Governor of the Central Bank;

“Inspector” means the Inspector of Financial Institutions appointed pursuant to section 7 of the Financial Institutions Act and includes any person appointed to act temporarily for him;

Chap. 79:09

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

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

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

- (a) in the form of cash; or
- (b) any other instrument or investment that can be converted into cash within one year without significant loss;

“member” means a person admitted to the membership of a credit union or society admitted to the membership of a secondary body after registration, in accordance with the by-laws of that credit union or secondary body and holding at least one share of the credit union or secondary body;

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

“officer” includes –

- (a) the Chairman, President, Secretary, Treasurer, manager, a member of the board of a credit union, a member of any committee required to be established in accordance with this Act or any written law and any other individual designated as an officer by the by-laws of the credit union or by resolution of the credit union's members;
- (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;

“operating certificate” or “certificate” means the certificate issued to a credit union in accordance with section 26 of this Act;

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

“prudential criteria” means the criteria and standards established under this Act for the purpose of setting limits and constraints on credit unions for the protection of members and potential members from undue loss and for ensuring the safety and soundness of the credit union sector;

“qualified accountant” means a person who is a member of the Institute of Chartered Accountants of Trinidad and Tobago or such other professional association as may be approved by the Central Bank;

“related party” means –

- (a) an officer of a credit union;
- (b) a relative of an officer of the credit union;

- (c) a person with a significant interest in a class of shares of the credit union;
- (d) an entity controlled by a person referred to in paragraph (a), (b) or (c);
- (e) an entity in which a person described above has a substantial investment; and
- (f) any other person whose relationship to another person is such that in the opinion of the Central Bank, may cause a conflict of interest or may pose a regulatory risk;

“relative” means, in relation to an individual –

- (a) the spouse, including a cohabitant as defined in the Cohabital Relationships Act;
- (b) a parent;
- (c) a brother;
- (d) a sister; and
- (e) a child (including adopted child, step-child and child born of a cohabitational relationship);

Chap. 45:55

“secondary body” means a society whose registered members consist exclusively of societies and whose objects include the facilitation of the operations of credit unions;

“significant interest” means an interest held by a member which is equal to one-fifth of the shares of a credit union or such other limit as may be prescribed;

“society” means a society registered or deemed to have been registered under the Co-operative Societies Act;

“statutory committee” means –

- (a) the credit committee;
- (b) the supervisory committee; or
- (c) any other committee which the Central Bank directs a credit union to establish in accordance with this Act;

“substantial investment” means an interest held or investment by a credit union in any entity which is or will be equal to or greater than twenty per cent of the voting securities of or equity interests in the entity or such other percentage as may be prescribed;

“supervisory committee” means the supervisory committee defined in the Co-operative Societies Act;

“supervisory information” means a record created or obtained by the Central Bank in connection with the performance of its responsibilities under this Act, such as a record concerning supervision, authorization, or examination of a credit union or enforcement actions with respect to a credit union, and includes any communication or correspondence between the credit union and the Central Bank arising from its performance of such responsibilities.

4. In the case of any inconsistency or conflict between this Act and any other written law, with the exception of the Central Bank Act, the provisions of this Act shall prevail and take precedence over such other law unless expressly provided to the contrary in this Act or such other written law. Act to prevail

## **PART II**

### **ADMINISTRATION**

5. (1) The Central Bank shall be responsible for – Central Bank to administer Act
- (a) the general administration of this Act and shall have the powers and duties conferred on it by this Act and the Central Bank Act as that Act applies to the regulation of the financial activities of credit unions;

- (b) determining the financial soundness of credit unions;
- (c) supervising credit unions to ensure their compliance with the Act;
- (d) protecting members' deposits and shares from undue loss; and
- (e) ensuring compliance of credit unions with legislation to combat money laundering and terrorist financing.

(2) In the discharge of its responsibilities pursuant to this section, the Central Bank may –

- (a) subject to section 26 issue operating certificates to credit unions existing immediately prior to the coming into operation of this Act;
- (b) process applications and issue operating certificates to new credit unions;
- (c) vary, restrict or revoke operating certificates;
- (d) establish prudential criteria to be met by credit unions;
- (e) obtain information in such form and at such frequency as the Bank may, in writing, from time to time require;
- (f) perform assessments of the risk profile and the safety and soundness of each credit union;
- (g) conduct on-site examinations of credit unions and issue to the relevant credit union, any report produced from the examinations conducted;
- (h) conduct continuous off-site assessment of the financial condition and performance of

credit unions and of their compliance with this Act;

- (i) where it deems such action to be appropriate, issue guidelines to facilitate compliance with any of the provisions of this Act; and
- (j) take any other action deemed necessary by the Bank to ensure the safety and soundness of the credit union sector in accordance with this Act.

Governor to keep  
Minister  
informed

6. The Governor shall keep the Minister informed of all developments and activities which affect the credit union sector in Trinidad and Tobago.

Annual report

7. The Central Bank shall include in its annual report under section 53 of the Central Bank Act, information with respect to the performance of the credit union industry.

Duties and  
powers of  
Inspector

8. (1) The Inspector shall examine all applications for approvals to be granted or issued under this Act and make recommendations thereon to the Central Bank.

(2) The Inspector shall make or cause to be made, such examination and inquiry into the affairs or business of each credit union as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the credit union is in a sound financial condition.

(3) The Inspector shall take and maintain such steps or proceedings as may be necessary for the winding-up of a credit union subject to the direction of the Central Bank and this Act.

(4) For the purpose of determining the financial condition of a credit union and its compliance with this Act, the Central Bank may call upon the current or any former external auditor or any member of the board or officer of the credit union to provide such information that is related to or may affect the financial condition of the credit union.

(5) In the performance of its duties under this Act, the Central Bank or the Inspector shall at all reasonable times have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including

documents stored in electronic form, of any credit union and the right to call upon any member of the board of a credit union, officer, external auditor or employee of the credit union for any information or explanation the Bank considers necessary for the due performance of its duties.

(6) If an on-site or off-site examination of the affairs of a credit union reveals that the credit union is conducting its business in an unlawful or unsound manner or is otherwise in an unsound condition, the Inspector may –

- (a) direct the credit union to engage an independent accountant to perform or conduct a review of its financial statements and accounting records and advise the Central Bank and the credit union of the true financial condition of the credit union; and
- (b) take all such other measures as he may consider necessary.

(7) A person who fails to comply with a request under subsection (4), (5) or (6) or who obstructs a person in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a credit union, to a fine of thirty thousand dollars and in the case of a director, officer or employee of the credit union to a fine of thirty thousand dollars and to imprisonment for two years.

(8) Where a person fails to comply with a request under subsection (4) or (5) the Inspector may, in addition to any other action that may be taken under this Act, apply to the High Court for an order requiring the person to comply with the restriction or measure imposed, and on such application, the Court may so order and make any other order it thinks fit.

(9) A credit union that fails to take measures required by the Inspector pursuant to subsection (6), commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and in the case of a continuing offence to a fine of three thousand dollars for each day that the offence continues.

(10) The Inspector or a person authorized by the Central Bank may, subject to subsection (12) enter into the premises of any credit union -

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

(11) Where the books, records, accounts, vouchers, minutes of meetings, securities and any other documents including documents stored in electronic form referred to in subsection (5) are not in the possession of the credit union or any director, officer, auditor or employee of any such credit union, the Central Bank or the Inspector shall have the access set out in subsection (5) except that where the person in possession is in such possession by way of a lien, production to the Central Bank or to the Inspector of the books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form, shall be without prejudice to the lien.

(12) Where the Inspector or a person authorized by the Central Bank, in the exercise of the powers conferred on him under subsection (10) is-

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

he shall apply for and obtain an *ex parte* order of the High Court, which shall constitute the warrant for the designated authority to enter into the premises of the credit union.

(13) The application referred to in subsection (12) shall show reasonable cause for the Inspector or a person authorized by the Central Bank to enter into the premises of the credit union to fulfill the requirements of subsection (10).

Extension of  
time limit

9. Where the provisions of this Act require anything to be done within a specified period of time and the person who is

required to comply with the time limit prescribed is unable to do so because of the occurrence of any hurricane, storm, fire, flood or any similar natural disaster or event such as industrial unrest, riot, public disorder or the like, the Inspector shall grant such extension of time as may be reasonably sufficient for the doing of the act or thing.

10. (1) In obtaining information pursuant to section 5(2)(e) and this Act generally, the Central Bank may require a -

Power of  
Inspector to  
request  
information

- (a) credit union, its employees or agents;
- (b) company, unincorporated body or society in which the credit union has an ownership interest;
- (c) company, unincorporated body or society that is a related party;
- (d) present or former director, officer, or auditor of a credit union; and
- (e) current or former director, officer, auditor or controlling shareholder or significant shareholder of any company, unincorporated body or society referred to in paragraphs (b) and (c),

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

(2) The Central Bank may—

- (a) from time to time, require verification from the auditor of a credit union or any company, unincorporated body or society referred to in subsection (1) with respect to the accuracy of information submitted pursuant to that subsection;
- (b) from time to time require an officer of a credit union to supply, within such time as may be specified, any information relating to the credit union or any related party or person over which the credit union or

directors or officers of the credit union have control; and

- (c) may itself verify the accuracy of the information by inspecting the credit union, company or unincorporated body or society.

(3) A request made under subsections (1) and (2) shall be in writing.

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

Second Schedule

(5) A person whom the credit union proposes to elect as a member of the board or appoint as an officer shall be entitled to refuse to supply the documents requested by the Inspector pursuant to subsection (4) if he no longer intends to stand for election or take up the appointment and has so advised the Inspector in writing.

(6) Subject to subsection (5), a person who fails to supply information or produce the documents required under this section within the time specified commits an offence.

Power of Central Bank to collect statistics

11. (1) The Central Bank shall collect statistics in relation to credit union business.

(2) Every credit union shall, for the purpose of enabling the Central Bank to collect statistics under this section, furnish the Central Bank with information in such form and at such times as specified by the Bank.

12. (1) In the exercise of their functions, powers and duties under this Act, the Central Bank, the Governor and the Inspector may –

- (a) delegate any such function, power or duty to; and

- (b) exercise any of its powers and duties through,

any officer, employee or agent of the Bank.

(2) The Central Bank shall appoint, upon such terms and conditions as it may think fit, such persons as may be considered necessary to assist the Inspector in the performance of his duties.

(3) The Central Bank shall, whenever it considers necessary, cause arrangements for the services of an auditor or any other competent person to be made available for the purpose of advising the Inspector on matters arising under this Act.

(4) The Board may delegate in writing any of its functions, powers or duties to a committee appointed by the Board comprising a minimum of three members of the Board.

13. The Central Bank shall maintain such registers as may be required or authorized to be maintained under this Act Regulations and in particular shall maintain separate registers of societies to whom the Central Bank has issued operating certificates to carry on the various classes of credit union business in Trinidad and Tobago.

Central Bank to  
maintain registers

14. (1) No later than the thirty-first day of March in each year, the Central Bank shall publish in the *Gazette*, in at least one daily newspaper circulated in Trinidad and Tobago and by any other means the Central Bank thinks appropriate, a list of credit unions and secondary bodies authorized to carry on credit union business in Trinidad and Tobago.

Information to be  
published by the  
Central Bank

15. (1) The Minister may, on the recommendation of the Central Bank, make Regulations for carrying the purposes and provisions of this Act into effect and without limiting the generality of the foregoing, may make Regulations providing for –

Regulations

- (a) any matter required to be prescribed under this Act;
- (b) prudential criteria; and
- (c) operating certificates.

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

Draft  
Regulations

16. (1) Before the making of any Regulations pursuant to section 15, the Central Bank shall submit the proposed Regulations in draft form to every credit union, the Commissioner and any other person who may be affected by them, and shall consult with the credit unions, the Commissioner and other affected persons regarding the proposed instrument.

(2) Where, in the opinion of the Central Bank, any matter proposed to be dealt with in Regulations under this Act has become urgent, the Minister may promulgate the Regulations or an amendment thereof without following the process referred to in subsection (1), in which case the Central Bank shall publish its reasons for so doing in the *Gazette* and at least one daily newspaper published and circulated in Trinidad and Tobago and by any other means the Central Bank thinks appropriate.

Guidelines

17. (1) The Central Bank may issue Guidelines to –

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

Chap. 11:27  
Chap. 12:08

(2) Guidelines issued under this section shall not be regarded as statutory instruments.

(3) Contravention of a Guideline referred to in subsection (1) shall not constitute an offence, but this shall not prevent the Central Bank or the Inspector from taking action under section 65.

Consultations on  
Regulations and  
Guidelines

18. (1) Before making or amending Guidelines referred to in section 17, the Central Bank shall issue draft Guidelines or draft amendments thereof and shall consult with the credit unions, the Commissioner and other affected persons regarding the Guidelines or amendments.

(2) Where, in the opinion of the Governor after consultation with the Inspector, any matter proposed to be dealt with in Guidelines or by an amendment thereof has become urgent, the Central Bank shall proceed to issue the Guidelines or amendment thereof without following the process referred to in subsection (1), and shall subsequently consult with the credit unions, the Commissioner and other affected persons regarding the Guideline or amendment.

19. (1) Subject to subsection (2), the Minister may, by Order, on recommendation of the Central Bank, amend the Schedules to this Act. Amendment of Schedules

(2) Any amendment to the Fourth Schedule shall be subject to negative resolution of Parliament.

20. (1) No director, officer or employee of the Central Bank or person acting under the direction of the Bank shall disclose any information regarding the business or affairs of a credit union or information regarding a member or other person dealing with a credit union that is obtained in the course of official duties. Prohibition against disclosure

(2) Notwithstanding subsection (1) or any other written law, the Central Bank, or a person authorized in writing by the Bank, may disclose the information referred to in subsection (1) to –

- (a) the Commissioner and any local or foreign regulatory agency or body that regulates credit unions and financial entities, for purposes related to that regulation; or
- (b) the designated authority under the Financial Intelligence Unit of Trinidad and Tobago Act,

if the Central Bank is satisfied that the information will be treated as confidential by the agency or body to whom it is disclosed and used strictly for the purpose for which it is disclosed.

(3) Further to subsection (2), the Central Bank may enter into a Memorandum of Understanding with the Commissioner, the designated authority, or any local or foreign regulatory agency or body that regulates financial entities with respect to sharing information, but the absence of such Memorandum of Understanding shall not prevent the Bank from

disclosing the appropriate information to such designated authority, local or foreign regulatory agency or body.

(4) A director, officer or employee of the Central Bank or any person acting under the direction of the Bank may disclose, at such times and in such manner as it deems appropriate, such information obtained by the Bank under this Act as it considers ought to be disclosed for the purposes of the analysis of the financial condition of a financial institution that -

- (a) is contained in any return, statement or other document required to be filed with the Bank pursuant to this Act and the Regulations and Guidelines made under this Act; or
- (b) has been obtained as a result of any industry-wide or sectoral survey conducted by the Bank in relation to an issue or circumstance that could have an impact on the financial condition of credit unions or the financial system of Trinidad and Tobago.

(5) Where the Central Bank determines that the disclosure of further information concerning a credit union in addition to that referred to in subsection (4) would be in the best interests of –

- (a) the financial system of Trinidad and Tobago; or
- (b) the members or creditors of such credit union, the Bank or any person acting under the direction of the Bank may disclose such information by publication in the *Gazette*, at least one daily newspaper in circulation in Trinidad and Tobago or by any other means that the Central Bank considers appropriate.

(6) Nothing in this section authorizes the Central Bank or any person acting under the direction of the Bank to disclose information about a particular member or creditor of a credit union, except where such disclosure is required by any written law or ordered by the High Court.

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

(8) No action shall lie against the Central Bank or any person acting under the direction of the Bank for the disclosure of information authorized under this section.

(9) Notwithstanding any provision in this section, the Central Bank may publish information relating to the credit union sector including statistics collected under section 11, so long as the publication does not disclose details regarding any particular credit union or credit union member.

21. Supervisory information is the property of the Central Bank and may not be disclosed by a credit union or any other person to whom the information is made available without the prior written consent of the Bank.

Supervisory  
information

### **PART III**

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

22. (1) Subject to this section –

Requirement for  
operating  
certificate

(a) no person or entity other than a credit union shall carry on the business of a credit union; and

(b) no credit union shall carry on any business other than the business of a credit union,

unless it is the holder of an operating certificate issued under this Act.

(2) The Central Bank may permit a credit union to conduct non-financial activities subject to this Act.

(3) A credit union that is conducting non-financial activities that exceed the limits set out in this Act shall transfer those activities to –

- (a) a non-financial co-operative that is set up by the membership of the credit union; or
- (b) any other form of business enterprise that is set up by the membership of the credit union.

(4) The credit union may allocate funds to the non-financial co-operative for start-up costs from its net surplus and for ongoing operating expenses from its surplus provided that all conditions for distribution of surplus set out in section 54(1) and all prudential criteria of this Act have been met prior to the allocation of these funds.

(5) The operating expenses of any non-financial co-operative or other business entity established by the credit union shall not be reflected as expenses of the credit union.

Branches

23. (1) No credit union shall, without at least seven days prior notice in writing to the Central Bank, establish, acquire, open or close a branch.

(2) A credit union wishing to conduct business outside of Trinidad and Tobago shall first obtain the written approval of the Central Bank.

## **PART IV**

### **REGISTRATION AND OPERATION OF A CREDIT UNION**

Secondary  
bodies

24. (1) A secondary body, carrying on the business of a credit union, shall apply to the Central Bank for an operating certificate and the certificate, where granted, shall be with respect to the secondary body's credit union activities, only.

(2) A secondary body that is granted an operating certificate shall be subject to this Act in the same manner as a credit union and to any special requirements as the Central Bank may determine.

Exemption of  
certain societies

25. The Minister may, on the recommendation of the Central Bank, by Order, exempt from the provisions of this Act any society that is not a credit union, that may be issuing shares, taking deposits and making loans and investments.

26. (1) Subject to subsection (2), the Central Bank shall issue an operating certificate to every credit union listed in the Register of Societies pursuant to the Co-operative Societies Act.

Issuance of operating certificate to existing credit unions

(2) The Central Bank shall not issue an operating certificate to –

- (a) a credit union that has been inactive;
- (b) a credit union in respect of which the Commissioner has commenced winding-up proceedings prior to the coming into operation of this Act; or
- (c) a credit union in the process of being de-registered by the Commissioner.

(3) Notwithstanding the issuance of an operating certificate, every existing credit union shall within thirty days of the coming into operation of this Act, submit the following documents to the Central Bank:

- (a) a copy of the credit union's registration certificate;
- (b) a copy of the current by-laws of the credit union approved by the Commissioner;
- (c) a current list of officers of the credit union;
- (d) its annual budget for the current year; and
- (e) copies of the credit union's three most recently audited financial statements or annual reports.

(4) Within ninety days of the coming into operation of this Act, the Central Bank shall publish a list of the credit unions that have complied with subsection (3) in the *Gazette*, at least one daily newspaper in circulation in Trinidad and Tobago and by any other means that the Bank considers appropriate.

(5) The Central Bank shall, for a period not exceeding one hundred and twenty days from the coming into operation of this Act, make all reasonable efforts to notify a credit union that it

is non-compliant with subsection (3) and liable to prosecution or to the cancellation of its operating certificate should the required information not be provided within such time as the Bank may stipulate.

(6) Notification under subsection (5) shall be by registered mail addressed to the credit union's registered office.

(7) Upon expiration of the stipulated time referred to in subsection (5), the Central Bank may take any action it sees fit in accordance with this Act.

(8) The Central Bank may, pursuant to section 30(1) revoke the operating certificate of any credit union which –

(a) remains non-compliant with the requirements of subsection (3); and

(b) has been notified under subsection (5).

(9) For the purposes of this section, “inactive” in relation to a credit union refers to a credit union determined by the Commissioner, to have been inactive at the time of the coming into operation of this Act.

Application for  
operating  
certificate

27. (1) A credit union desirous of carrying on the business of a credit union shall apply to the Central Bank for an operating certificate in accordance with this Act.

(2) The Central Bank may, on an application made under this section, on the recommendation of the Inspector, approve or reject the application.

(3) The Central Bank shall upon its approval of an application, issue to the applicant an operating certificate signed by the Governor.

(4) Where the Central Bank refuses to grant an operating certificate, the Bank shall give reasons for the refusal to the applicant in writing within fourteen days of the date of refusal and the credit union shall have the right to appeal the decision to the High Court.

(5) An operating certificate may contain such terms and conditions as the Central Bank considers appropriate taking into account the particular circumstances of the credit union.

(6) Notice of the issuance of an operating certificate by the Central Bank shall be published in the *Gazette*, at least one daily newspaper in circulation in Trinidad and Tobago and by any other means that the Central Bank considers appropriate.

(7) A credit union shall display its operating certificate at its registered office and a copy issued by the Central Bank shall be displayed at each of its branches.

(8) An operating certificate issued under this Act shall be valid until it is revoked and take effect on the date of issue notwithstanding the date of publication in the *Gazette*.

(9) Where the Central Bank has reasonable grounds to believe that a society is carrying on any aspect of the business of a credit union without a valid operating certificate issued under this Act, it may require information from, inquire into and examine the affairs of, that society and may take any action that the Bank sees fit to ensure that the society discontinues the activity in question including without limitation, the issuance of a compliance direction to cease the activity under section 65.

28. (1) Where a credit union has been issued an operating certificate and wishes to vary its existing classes of business it shall make an application in writing to the Central Bank.

Request to vary existing classes of business

(2) The Central Bank may, on an application made under this section, on the recommendation of the Inspector, approve or reject the application.

(3) The Central Bank shall upon its approval of an application for variation of the classes of business, issue to the applicant a new operating certificate signed by the Governor.

(4) Where the Central Bank refuses to vary the classes of business of a credit union, the Bank shall give reasons for the refusal to the applicant in writing within fourteen days of the date of refusal and the credit union shall have the right to appeal the decision to the High Court.

(5) A credit union shall not be permitted to vary its existing classes of business unless it is, in the opinion of the Central Bank, in compliance with the provisions of this Act.

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

Restriction of an operating certificate

29. (1) The Inspector may, upon consultation with the Governor acting on behalf of the Central Bank, restrict the operating certificate of a credit union where –

- (a) the credit union has failed to comply with any obligation imposed under this Act;
- (b) the credit union has failed to comply with any requirement, prohibition, compliance direction or any other direction issued by the Inspector;
- (c) the credit union has provided Central Bank with false, misleading or inaccurate information;
- (d) the credit union has failed to comply with any obligation imposed on it by any written law for the prevention of money laundering or terrorist financing including the Proceeds of Crime Act, the Anti-Terrorism Act, the Financial Intelligence Unit of Trinidad and Tobago Act;
- (e) in the opinion of the Inspector, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason;
- (f) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
- (g) any of the criteria of the Second Schedule, except paragraph A is not or has not been fulfilled or is unlikely to be or may not be fulfilled in respect of the credit union;

- (h) a receiver or manager of the credit union has been appointed; and
- (i) the holder of any debenture secured by a charge has taken possession of any part of the property of the credit union comprised in or subject to the charge.

(2) The Inspector may place restrictions on an operating certificate by issuing such directions as he thinks necessary to protect the interests of the members or potential members of the credit union.

(3) Directions issued under this section may, in particular -

- (a) require the credit union to take certain steps or refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way;
- (b) stipulate limitations on the acceptance of deposits and issuance of shares, the incurring of credit exposure or the distribution of surplus;
- (c) prohibit the credit union from accepting and soliciting deposits from members or prospective members;
- (d) prohibit the credit union from entering into any other business of a credit union;
- (e) require the removal of any officer of the credit union; or
- (f) specify such other requirements as the Inspector may think fit.

(4) A direction issued under this section may be varied or withdrawn by the Inspector.

(5) A credit union or any officer thereof who fails to comply with any requirement or contravenes any prohibition imposed on it by a direction under this section, commits an offence and is liable on summary conviction, in the case of a credit union,

to a fine of thirty thousand dollars and in the case of an officer to a fine of three thousand dollars and to imprisonment for two years.

(6) Where a credit union fails to comply with a direction issued under this section the Inspector may take any other action he deems fit to ensure the safety and soundness of the credit union in accordance with this Act

(7) A credit union may appeal to the High Court, the decision of the Inspector to restrict an operating certificate.

(8) The Central Bank shall publish notification of the restriction of the credit union's operating certificate in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago and by any other means that the Central Bank considers appropriate.

(9) The restriction of an operating certificate shall not relieve a credit union of any obligation incurred or assumed by it during the period of validity of the operating certificate.

Revocation of an operating certificate

30. (1) Where the Central Bank is satisfied that –

- (a) the operations of the credit union threaten the credit union sector in Trinidad and Tobago;
- (b) the capital or liquidity of the credit union is inadequate or insufficient to meet its liabilities;
- (c) in the opinion of the Inspector, the interests of members of the credit union are in any way threatened, whether by the manner in which the credit union is conducting or proposes to conduct its affairs or for any other reason;
- (d) the credit union has merged or has been amalgamated with another credit union;
- (e) the credit union has ceased to carry on the business of a credit union;
- (f) the credit union has not accepted a deposit or issued shares in Trinidad and Tobago

within the period of twelve months from the day on which the operating certificate was issued or having accepted a deposit or deposits and issued shares, has subsequently not done so for any continuous period of more than six months or has otherwise ceased to carry on the business of a credit union;

- (g) a receiver or manager of the credit union has been appointed;
- (h) the holder of any debenture secured by a charge has taken possession of most or a significant part of the property of the credit union comprised in or subject to the charge;
- (i) the credit union is carrying on any aspect of the business of a credit union without a valid operating certificate issued under this Act;
- (j) failure by the credit union to comply with a direction issued under section 29(3) or (4);  
or
- (k) failure by the credit union to comply with section 26(3),

the Bank may, after considering all the relevant facts and circumstances, revoke the operating certificate of credit union.

(2) Subject to subsection (9), before the Central Bank decides to revoke an operating certificate, it shall –

- (a) give the credit union written notice of its intention to do so, specifying the grounds upon which the Bank proposes to revoke the operating certificate and the date on which such proposed revocation is to take effect; and
- (b) require the credit union to submit to the Bank within a specified period, a written statement of any objections to the revocation of the operating certificate.

(3) Where the Central Bank has served a notice of its intention to revoke an operating certificate, and has taken into account any objection made under subsection (2), the Bank shall decide whether to –

- (a) revoke the operating certificate; or
- (b) take other regulatory action as may be permitted under this Act.

(4) Where the Central Bank decides to revoke the operating certificate, the Bank shall serve the credit union notice of revocation that shall include the date on which the revocation takes effect, a statement of the grounds for the decision and the rights of the credit union under subsection (7) and section 86.

(5) Where the Central Bank serves a notice of revocation under subsection (4), the Inspector shall take charge of all books, records and assets of the credit union or any portion thereof and may apply to the High Court to appoint a Judicial Manager, and do all such things as may be necessary to safeguard the interests of members and creditors of the credit union until any appeal filed pursuant to subsection (7) has been determined.

(6) Where a decision is made to revoke an operating certificate under subsection (4), the credit union shall cease carrying on business from the date specified in the notice of revocation.

(7) Where a credit union is aggrieved by a decision of the Central Bank to revoke its operating certificate under subsection (3), the credit union may appeal to the High Court within fourteen days of the date of its receipt of the notice of revocation setting forth the grounds of appeal.

(8) Where a decision is made to revoke an operating certificate and the decision is not set aside by the High Court, the Inspector shall apply to the High Court for an order for the winding-up of the credit union.

(9) Notwithstanding subsection (1), the Central Bank shall revoke the operating certificate of a credit union where –

- (a) a winding-up order has been made against it;

- (b) all its assets have passed into the ownership of another person; or
- (c) a resolution for its voluntary winding-up has been passed in accordance with section 76.

(10) Within five days of a credit union ceasing to hold an operating certificate the Central Bank shall publish notification of the revocation of the operating certificate of a credit union in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago and by any other means that the Central Bank considers appropriate.

(11) The revocation of an operating certificate shall not relieve a credit union of any obligation incurred or assumed by it during the period of validity of the operating certificate.

(12) The Inspector may incur expenses to give effect to subsection (5), including costs in connection with—

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

to be borne by the credit union.

(13) Where the credit union does not have adequate liquidity to meet the costs referred to in subsection (12), the Central Bank may provide funding to cover such costs, which funding shall be treated as a loan by the Bank to the credit union and shall be repaid out of the funds of the credit union or, in the event that the credit union is liquidated, shall be a first charge on the assets of the credit union.

31. (1) No notice of intention need be given under section 30 in respect of the revocation of an operating certificate in any case in which revocation is mandatory under subsection 30(9).

No notice of intention required

(2) In any case referred to in subsection (1), the Central Bank may by written notice to the credit union, revoke the operating certificate.

(3) A notice under subsection (2) shall state the reasons for which the Central Bank has acted and, give particulars of the credit union's rights conferred by section 86.

(4) Where –

- (a) the ground for a proposed restriction or variation of an operating certificate is that it appears to the Board that the criteria in paragraph A of Second Schedule is not or has not been fulfilled, or is unlikely to be or may not have been fulfilled in the case of any person; or
- (b) a proposed restriction consists of or includes a condition requiring the removal of any person as director or officer,

the Board shall serve on that person, a copy of the notice to restrict together with a statement of his rights under subsection (5).

(5) A credit union which is served with a notice to restrict or vary an operating certificate, and a person who is served with a copy of the notice under subsection (2) or (4) may, within the period of fourteen days commencing from the day after which the notice was served, make representation to the Board.

(6) After serving a notice under subsection (2) or (4) imposing a restriction or varying an operating certificate respectively, and taking into account any representations made in accordance with subsection (5), the Board shall decide whether to—

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

(7) The Board shall, within the period of twenty-one days commencing from the day after which the representations have been made, give the credit union concerned, written notice of its decision under subsection (6) and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(8) Where the notice under subsection (7) contains a decision to take the action specified in subsection (6)(b) the notice under subsection (7) shall have the effect of imposing the restriction or giving the variation specified in the notice effect from the date on which the notice is served.

(9) Where a notice of intention to revoke an operating certificate under section 19(2) is followed by a notice revoking an operating certificate under this section, the latter notice shall have the effect of terminating any right to make representations in respect of the proposed revocation.

## **PART V**

### **REGULATION AND SUPERVISION OF CREDIT UNIONS**

32. (1) Every credit union or entity in which a credit union exercises control shall submit to the Central Bank within such period of time as may be specified by the Bank, and in such form as the Bank may from time to time require, returns containing statements of its –

Submission of  
certain returns

- (a) assets and liabilities;
- (b) loans and advances including delinquency;
- (c) earnings and expenses;
- (d) assets and revenues related to non-financial activities; and
- (e) any other financial data or information as the Bank may require,

for examination by the Bank.

33. (1) Every credit union shall, within three months after the close of its financial year, submit to the Central Bank audited financial statements of its operations in such form as the Bank may require.

Submission of  
audited financial  
statements

(2) Subject to subsection (3), every audited statement submitted pursuant to subsection (1) shall be signed by the President and Treasurer of the credit union.

(3) Where the President or the Treasurer or both are unable to perform this function for whatever reason the board of the credit union may designate any board member to sign on behalf of either the President or Treasurer for the purpose of this section.

Examination of returns and statements

34. (1) Upon examination of the returns and audited financial statements referred to in sections 7 and 8, the Central Bank may –

- (a) where it determines that the credit union's financial condition has deteriorated to cause risk to its safety and soundness, consult with the credit union and propose measures to prevent any further financial deterioration;
- (b) take such action as it sees fit in accordance with this Act where the Bank determines that the credit union is insolvent based on the Technical Solvency Test set out in the Third Schedule;
- (c) take such action as it sees fit in accordance with this Act where the Bank determines that the credit union is operating in a manner that may result in insolvency or the winding-up of the credit union; or
- (d) require the credit union to remedy any position of insolvency based on a plan approved by the Bank, within one year of such approval.

Third Schedule

(2) Where a credit union fails to comply with any measure imposed by the Central Bank pursuant to the Bank's intervention under subsection (1), the Bank may take such action as it sees fit in accordance with this Act.

Corrective action by Central Bank

35. The Central Bank may take corrective action in accordance with this Act where –

- (a) a credit union does not meet the ratio of one hundred per cent in the solvency test set out in the Third Schedule; or

- (b) the credit union meets the ratio of one hundred per cent in the solvency test but –
  - (i) is unable to meet its obligations as they become due;
  - (ii) has ceased paying its current obligations in the ordinary course of business; or
  - (iii) the aggregate of 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.

36. (1) Notwithstanding section 5(2)(g) and (h), the Central Bank may engage a suitably qualified accountant to act under the direction of the Bank to determine the financial condition of a credit union. Report by qualified accountant

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

## **PART VI**

### **BOARD MEMBERS, OFFICERS AND COMMITTEES**

37. (1) A member of the board of a credit union shall meet the following minimum qualifying criteria: Members of the Board

- (a) be no less than eighteen years of age;
- (b) be of sound mind;
- (c) be a member of the credit union;
- (d) have sufficient knowledge and understanding of the business of a credit union; and
- (e) meet the fit and proper criteria stipulated in the Second Schedule.

(2) A credit union shall be responsible for determining the fitness and propriety of persons referred to in subsection (1) and the process by which it is done.

(3) A person nominated for membership to the board of a credit union shall declare his membership on the board of any other credit union to the nomination committee where applicable and to the Annual General Meeting of the credit union.

(4) Individual board members may serve a maximum of two consecutive terms, with each term not exceeding three years, with eligibility for re-election after a one-year waiting period.

(5) Where a credit union is not in compliance with subsection (4), it shall return to compliance within eighteen months of the coming into operation of this Act.

(6) The board of a credit union shall make an annual declaration to the Inspector –

- (a) attesting to the compliance of the credit union with this Act and any guidelines issued by the Bank;
- (b) attesting to the fitness and propriety of its elected officers;
- (c) providing an updated listing of the composition of the board and statutory committees; and
- (d) indicating which of its membership, if any, currently serve on other credit union boards and the names of those credit unions.

(7) The Board of the credit union shall within seven days of any change in the membership of the board or officers of the credit union, notify the Inspector in writing of such change.

(8) A credit union which fails to comply with any of the provisions set out in subsections (1), (3), (4), (5), (6) and (7), commits an offence and the Bank may take such action as it sees fit in accordance with this Act.

Persons debarred  
from  
management

38. (1) A person who has been –

- (a) a director, member of the board or officer of a company or society in the ten-year period immediately preceding a winding-up order being made by a court or the date that the company or society had been placed in receivership;
- (b) adjudged a bankrupt under the Bankruptcy Act; and
- (c) a member of the board or officer of a former credit union, the operating certificate of which has been revoked, unless such revocation was due to -
  - (i) its amalgamation with another credit union; or
  - (ii) its voluntary winding-up,

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

(2) A person who –

- (a) has been convicted by a court for an offence involving fraud, dishonesty or a contravention of the Proceeds of Crime Act or the Anti-Terrorism Act;
- (b) has been convicted of an offence under this Act; or
- (c) is not a fit and proper person in accordance with the criteria specified in the Second Schedule,

shall not act or continue to act as a member of the board or officer of, or be concerned in any way in the management of a credit union.

(3) Notwithstanding section 37(2), where for the purpose of subsection (2)(c) a person is not regarded, or is no longer regarded as fit and proper by the Central Bank, the Bank shall serve a notice on the credit union and where appropriate, on

the person concerned to the effect that the Bank proposes to disqualify the person from being a member of the board or officer, stating the reasons for its decision and particulars of the rights conferred by subsection (4).

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

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

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

Duties and responsibilities

39. (1) The board of a credit union shall be responsible to the members of the credit union for the management of the business affairs of the credit union and in pursuance thereof the board shall conduct the affairs of the credit union with transparency and accountability.

(2) In addition to the duties prescribed in the credit union's by-laws, the board of a credit union shall –

- (a) approve such policies as are required for all major activities of the credit union, in particular, the lending, investment, liquidity and asset-liability management, accounting policies, and audit and internal control systems;
- (b) have charge of the investment of funds, except that the board of the credit union may designate an investment committee or any qualified professional to invest the credit union's funds in accordance with any investment policies established by the board of the credit union;
- (c) approve an annual operating budget for the

credit union, which shall include provision for the compensation of employees;

- (d) perform any other duty that is necessary and proper to carry out the purposes and exercise the powers of the credit union in accordance with this Act; and
- (e) give the Central Bank full access to all books, papers, records and other sources of information under its control in a timely manner as requested by the Bank.

(3) Where the board of a credit union fails to comply with subsection (2), the Inspector shall require the board to take such action, within a specified period, to effect compliance therewith.

(4) The board of a credit union that fails to take the necessary action in accordance with subsection (3) commits an offence and the credit union is liable on summary conviction to a fine of twenty-five thousand dollars.

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

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

(3) At least one member of the risk management committee shall have knowledge or experience in any two of the following disciplines:

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

(4) The function of the risk management committee shall be to manage the various forms of risk to which the credit union may be exposed, including credit, market, liquidity, operational and legal risks and in that regard, the risk management committee shall keep the board of the credit union informed of the credit union's risk exposure by submitting regular reports to the

board as agreed between the board and the committee.

(5) The function of the investment committee shall be to establish the credit union's investment policies and to coordinate and oversee the investment portfolio of the credit union.

(6) Members of the investment committee shall have a sound understanding of investment risks and liquidity management.

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

Conflict of  
interest

41. (1) A person who serves as an member of the board, officer or employee of a credit union, shall not –

- (a) participate, directly or indirectly, in the deliberation on or determination of a question affecting that person's pecuniary interest or the pecuniary interest of any related party;
- (b) be employed by, engage in, or own an interest in a business or professional activity that he could reasonably expect to -
  - (i) require or cause him to disclose confidential information acquired as a result of his office or employment in the credit union; or
  - (ii) impair his independence or judgment in the performance of his duties or responsibilities to the credit union.

(2) A person who serves as an officer or employee of a credit union, shall disclose to the board of the credit union any interest that he may have in a matter coming before the credit union or its board and shall thereafter recuse himself from participation in the discussion or vote on the matter.

Appointment of  
external auditor

42. (1) At each annual general meeting, the board of a credit union shall appoint an external auditor.

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

- (a) is a practising member in good standing of the Institute of Chartered Accountants of Trinidad and Tobago;
- (b) has knowledge and experience in the audit of financial institutions; and
- (c) is independent of the credit union and the elected officers of the credit union.

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

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

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

two years immediately preceding the appointment of the person as an auditor of the credit union.

Replacement of external auditor

43. (1) A credit union shall be required to advise the Central Bank in writing and to provide reasons where it proposes to replace an external auditor or where a person for any reason ceases to be the external auditor of the credit union.

(2) A person who resigns as an external auditor of a credit union or decides not to seek re-appointment as external auditor shall inform the Central Bank in writing of his reasons and provide any further information in respect thereof that the Bank may require.

(3) The board of a credit union shall notify the members of the credit union as soon as possible after the board has dismissed the external auditor and he ceases to be the external auditor of the credit union.

Auditing of accounts

44. (1) The board of a credit union shall cause the accounts of the credit union to be audited by the external auditor and filed with the Central Bank within ninety days of the close of each financial year.

(2) The board of the credit union shall submit a copy of the external auditor's findings and recommendations to the Central Bank within one week of receipt from the external auditor.

Further audit requirements

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

(2) The Central Bank may, by notice in writing to a credit union, require the credit union's external auditor to comply with such other reporting requirements as the Bank may stipulate in addition to generally accepted auditing standards employed in relation to the report referred to in subsection (1).

(3) The Central Bank -

(a) shall, in relation to the audit of a credit union, have access to the working papers of

the external auditor of the credit union for a period not exceeding four years preceding the date of submission of the audit report; and

- (b) may require the auditor of a credit union to provide the Central Bank with any further information that the Bank considers relevant.

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

46. Where the auditor of a credit union discovers, in the ordinary course of an audit, any irregular transactions or conditions which, in the opinion of the auditor meets one or more of the following criteria:

Duty of auditor to report

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

the auditor shall report such findings in writing to the board of the credit union and to the Inspector.

Protection of  
external auditor

47. (1) No duty to which a current or former external auditor of a credit union may be subject shall be regarded as contravened by reason of his communication in good faith to the Central Bank or to the Inspector, whether or not in response to a request made by either of them, for any information or opinion on a matter to which this section applies and which is relevant to any function of the Central Bank and the Inspector under this Act or the Central Bank Act.

(2) In relation to an external auditor of a credit union, this section applies to any matter of which he becomes aware in his capacity as external auditor and that relates to the business or affairs of the credit union or any member of the board or officer of a credit union or relative of such persons in relation to which the information is given, inclusive of information supplied under section 46.

## **PART VII**

### **SHARES AND DEPOSITS**

Members' shares

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

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

Permanent shares

49. (1) A credit union may issue permanent shares to its members for the purpose of increasing its institutional capital.

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

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

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

(5) Permanent shares shall not be resold to or redeemed by the credit union.

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

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

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

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

51. Except for permanent shares, all shares of a credit union shall be withdrawable on demand or with a required period of notice as stipulated by the credit union. Withdrawals

52. A credit union shall provide each member with, at least annually, a statement indicating – Members' Statement

(a) the balance of funds standing to the member's share, deposit and loan accounts; and Members' Statement

(b) all transactions affecting the account since the date of the previous statement.

53. (1) A member deposit account reported under liabilities shall be declared dormant where no transaction has taken place on the account and no statement of the account has been requested for a period of more than seven years except for the posting of dividends or interest. Dormant accounts

(2) Every credit union shall annually identify all member deposit accounts which are to be declared dormant pursuant to subsection (1).

(3) Notwithstanding subsection (2), every credit union shall within sixty days after the end of its financial year annually publish in at least one daily newspaper circulated in Trinidad and Tobago, a statement indicating that no transaction has taken place on the deposit account for a period of seven years 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 months of the publication.

(4) Where a deposit account is declared dormant pursuant to subsection (1), the board of the credit union shall take steps to transfer all accounts, interest and other sums due or standing to the member's account to the credit union's dormant members' account as a liability.

(5) 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.

Distributions  
from equity

54. (1) The board of a credit union may declare or propose a distribution from equity including a dividend or bonus where –

- (a) any impairment of institutional capital of the credit union has been corrected;
- (b) all allowances for impaired assets and loan losses have been fully funded;
- (c) all prior-year losses have been written off; and
- (d) the accounts have been audited.

(2) Payment of the distribution shall be made from realized, ordinary undivided surplus.

(3) An existing credit union that has not met the requirements of subsections (1)(a) to (d) may be allowed, for a period of three years after the coming into force of this Act, to make a distribution from equity including a dividend if –

- (a) it prepares and files with the Central Bank audited accounts pursuant to section 44 of this Act; and
- (b) the Central Bank has approved a plan prepared by the credit union to achieve compliance and has determined that the credit union is meeting its targets as outlined in the plan; or

alternately –

- (c) where the credit union's level of institutional capital which is below the minimum statutory level, does not suffer further decline during the transition period; and
- (d) the credit union's level of institutional capital is maintained at least at the minimum statutory level during the transition period.

## **PART VIII**

### **PRUDENTIAL REQUIREMENTS**

55. A credit union shall maintain a minimum level of institutional capital as may be prescribed or at such other level as the Minister on the recommendation of the Central Bank may approve.

Minimum level of institutional capital

56. A credit union shall maintain a minimum level of liquid assets in relation to total liabilities as may be prescribed.

Liquidity

57. (1) Notwithstanding sections 55 and 56, the Inspector may direct the credit union to –

Variation of level of institutional capital

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

based on the particular circumstances of the credit union.

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

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

Investments

(2) No credit union shall invest the credit union's funds except in accordance with this Act.

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

(4) A credit union's investments shall not exceed the limits prescribed in this Act.

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

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

## **PART IX**

### **LOANS AND INVESTMENT OF FUNDS**

Loans

59. (1) No credit union shall make loans to its members except in accordance with this Act.

(2) The board of a credit union, its credit committee and any officer so empowered by the board of the credit union may approve loans to members, except that loans approved by an officer shall be subject to ratification by the credit committee.

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

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

(5) The assignment of an interest in real or personal property or the assignment of shares other than permanent shares and deposits shall be considered acceptable forms of security.

(6) A credit union shall, at the time of providing a credit facility to a member, in a written statement disclose to the member,

the cost of borrowing, including the rate of interest and related fees.

(7) A credit union may make loans to its officers, and employees in accordance with policies and procedures established by the credit union in accordance with this Act.

(8) With the exception of a loan made to an employee as a benefit of employment, loans made to the persons referred to in subsection (7) shall be made on terms no more favourable than are available to other members of the credit union.

(9) No loan shall be made to an officer of a credit union of a sum in excess of the value of his shares and deposits and accumulated dividends and interests thereon unless the loan is –

- (a) approved by the vote of a two-thirds majority at a meeting of the other members of the board of the credit union, the credit committee and the supervisory committee sitting together; or
- (b) made with the consent in writing of all the members of the board of the credit union, the credit committee and the supervisory committee, except the borrowing officer.

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

(11) Where the member of the board fails to remedy the delinquency within thirty days of notification, he is deemed to have resigned from his post with effect from the date of notification.

60. No credit union shall include as income in a credit union's account, interest payable by the borrower on a delinquent loan. Treatment of interest

61. A credit union shall not incur credit exposures in excess of the maximum limit of its total institutional capital allowable under this Act. Credit exposure

Related party

62. (1) No credit union shall engage in activities with a related party except in accordance with this Act.

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

- (a) on terms and conditions no less favourable to the credit union than the terms and conditions on which such credit exposure is generally offered by the credit union; and
- (b) subject to the approval of the board of the credit union.

(3) This section shall not apply to any credit exposure incurred by a credit union to a related party prior to the coming into force of this Act.

(4) After the coming into operation of this Act, any modification of, addition to, renewal or extension of such credit exposure shall be subject to this section.

(5) Where, in the opinion of the Central Bank, a credit exposure incurred by a credit union to a related party exposes the credit union to excessive risk, or does not accord with the terms and conditions referred to in subsection (2)(a), the Bank may require the credit union to set aside or direct that changes be made to the credit exposure, or require the credit union to limit or reduce the credit exposure.

Borrowing by a credit union

63. No credit union may borrow except in accordance with this Act.

Real estate

64. (1) A credit union may hold or acquire real estate directly or indirectly without limits where such real estate is held or acquired solely for the purpose of –

- (a) conducting business of a credit union; or
- (b) for the purpose of housing officers or employees.

(2) Notwithstanding subsection (1), a credit union may –

- (a) conduct activities other than business of credit union subject to limits set out in this Act; or
- (b) hold other real estate subject to any limits set out in this Act.

## **PART X**

### **COMPLIANCE DIRECTIONS, ADMINISTRATIVE ORDERS AND INJUNCTIVE RELIEF**

65. (1) Where in the opinion of the Inspector, a credit union or any officer, employee or agent of the credit union – Compliance directions

- (a) has committed, commits, or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is an unsafe or unsound practice in conducting the business of the credit union;
- (b) has committed, commits, or is about to commit, an act, or is pursuing or is about to pursue a course of conduct that may directly or indirectly be prejudicial to the interest of members;
- (c) has violated or is about to violate any provision of this Act;
- (d) has breached any requirement or failed to comply with any measure imposed by the Central Bank or the Inspector in accordance with this Act,

the Inspector may direct the credit union, officer, employee or agent of the credit union to –

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

increasing the capital and providing additional liquidity; or

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

(2) The Inspector shall notify the Governor of the direction given pursuant to subsection (1).

(3) For the purpose of this section, the term “unsafe or unsound practice” shall include any action or lack of action that is contrary to generally accepted standards of prudent operation and conduct, the possible consequences of which, if continued, would be a risk of loss or damage to a credit union and its members.

(4) Subject to subsection (6), before a direction is issued, the credit union to which the direction is to be issued shall be served with a notice specifying -

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

(5) Where after considering the representations made in response to the notice referred to in subsection (4), the Inspector determines that the facts or any part thereof specified in the notice are established, the Inspector may proceed to issue directions to the person served with the notice.

(6) Notwithstanding subsection (5), where in the opinion of the Inspector, the length of time required for representations to be made might be prejudicial to the interests of members of the credit union, the Inspector may make an interim direction with respect to the matters referred to in subsection (1) having effect for a period of not more than thirty days.

(7) A direction made under subsection (6) continues to have effect after the expiration of the thirty-day period referred to in that subsection if no representations are made to the Inspector within that period or, if representations have been made, the

Inspector notifies the person to whom the compliance direction is issued that he is not satisfied that there are sufficient grounds for revoking the direction.

(8) Where the credit union served with the notice referred to in subsection (4) fails to attend at the time and place stipulated by the said notice, the Inspector may proceed to issue directions in the absence of such representations.

(9) The Inspector may, where he deems such action necessary and appropriate, direct the board of a credit union to inform its members that a compliance direction by the Inspector has been issued.

(10) If a person to whom a compliance direction is issued fails to comply with the direction, the Inspector may in addition to any other action that may be taken under this Act, apply to the High Court for an Order requiring the person to –

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

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

(11) A person who fails to comply with directions under this section commits an offence and is liable, on summary conviction –

- (a) in the case of a credit union to a fine of two hundred and fifty thousand dollars and, in the case of a continuing offence, to a fine of twenty five thousand dollars for each day that the offence continues;
- (b) in the case of a member of the board or officer of a credit union to a fine of two hundred and fifty thousand dollars and to imprisonment for five years; or
- (c) where the Inspector considers that a compliance direction is no longer necessary

he may cancel the notice to issue a compliance direction or revoke the compliance direction or confirm to the credit union that the requirements of the direction have been met.

Injunctive relief

66. Where the Inspector reasonably believes that a person is in violation of section 65, he may in addition to, or in lieu of other actions authorized under this Act –

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

## **PART XI**

### **JUDICIAL MANAGEMENT, SUSPENSION AND LIQUIDATION**

Judicial Management

67. (1) Where the Central Bank is satisfied that –

- (a) a ground for revocation under section 30(1) exists; or
- (b) the credit union has failed to submit financial statements and returns in accordance with section 32 so that the true financial position of the credit union is uncertain,

it may after receiving the advice of the Inspector and where it is of the opinion that it is necessary or proper for the credit union or any part of its business to be placed under judicial management, it may apply to the High Court for an order of judicial management.

(2) The provisions of subsection (1)(a) shall not apply to sections 30(1)(d), (e), (f), (g) or (k).

(3) A credit union may, after giving the Central Bank one month's notice in writing of its intention to do so, apply to the High Court for an order that it or any part of its business be placed under judicial management.

(4) Where an application is made to the High Court under this section –

- (a) the credit union; and
- (b) the Central Bank shall be entitled to be heard on the application.

(5) Where an application is made under this section for an order in respect of any credit union, all actions and the execution of all writs, summonses and other processes against the credit union, by virtue of this section, shall be stayed and shall not be proceeded with, without the prior leave of the High Court or unless the High Court directs otherwise.

68. (1) An order for the judicial management of a credit union shall be subject to the provisions of this section and of sections 67 and 69 to 71. Judicial Manager

(2) The High Court shall appoint a judicial manager who shall receive such remuneration from the credit union and may at any time cancel the appointment and appoint some other person as the judicial manager.

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

(4) Where an order for judicial management is made under this section, the management of the credit union shall, on and after the date specified in the order, vest exclusively in the judicial manager.

(5) A person who is appointed judicial manager, shall not, except with the leave of the High Court, accept any new deposits, issue new shares or grant any new loans.

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

(7) The judicial manager shall act under the control of the High Court and may at any time apply to the Court for instructions on the manner in which he shall conduct the judicial

management or in relation to any matter arising in the course of the judicial management.

(8) The judicial manager shall give a report on the status of the judicial management to the Central Bank on a monthly basis and shall provide the Central Bank with such information as it may from time to time require and shall report to the Central Bank whenever he intends to apply to the High Court for instructions and shall at the same time furnish the Central Bank with particulars of the application.

(9) The Central Bank is entitled to be heard on any application made pursuant to subsection (7) and may make an application to the High Court to be heard on any matter relating to the conduct of the judicial management.

Judicial Manager  
to file report

69. (1) The judicial manager shall conduct the management with the greatest economy compatible with efficiency, and shall as soon as possible after his appointment, file with the High Court a report stating which of the following courses is in the circumstances, in his opinion most advantageous to the general interests of the members of the credit union:

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

(2) The judicial manager shall, as soon as he has filed the report, furnish a copy thereof to the Central Bank and make a written application to the High Court for an order to give effect to the course stated in the report.

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

(4) Where the judicial manager recommends the transfer of the business of the credit union in accordance with subsection (1)(a), the Central Bank shall assess whether the proposed transfer meets the criteria of sections 70 and 71 and advise the High Court of its assessment during the hearing under section 68(1).

70. (1) The High Court shall on the hearing of an application made under section 68(2) –

Decision of High Court on report of judicial manager

- (a) after hearing the Central Bank, the judicial manager and any other person who in the opinion of the High Court ought properly to be heard; and
- (b) after considering the report of the judicial manager,

make an order giving effect to the course which it considers in the circumstances to be most advantageous to the general interest of the members of the credit union.

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

71. The High Court may, either of its own motion or on the application of the judicial manager, at any time while an order made under section 68 is in force with respect to a credit union and after hearing all persons who, in the opinion of the High Court are entitled to be heard, cancel or vary, either unconditionally or subject to such conditions as the High Court thinks just, any contract or agreement, other than a contract relating to deposits and shares which the High Court is satisfied is detrimental to the interests of the members of the credit union.

Court may cancel contracts

72. The judicial manager shall not be subject to any action, claim or demand by, or liability to, any person in respect of anything done or omitted to be done in good faith in the exercise of or in connection with the exercise of the powers conferred on him under this Part.

Indemnity

73. (1) The judicial manager, the Central Bank or any interested person may at any time apply to the High Court for the cancellation of an order made by the High Court under section 68.

Cancellation of judicial management order

(2) Where an application is made under subsection (1) and the High Court has heard the Central Bank on such application, the High Court may cancel the order if it appears to the Court that -

- (a) the purpose of the order has been fulfilled; or
- (b) it is undesirable for the order to remain in force.

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

Suspension of operations

74. (1) Where the Inspector is satisfied after an on-site or off-site examination of the affairs of a credit union that-

- (a) it is insolvent or unable to meet the minimum capital adequacy requirement stipulated in this Act;
- (b) it is unlikely to meet the demands of the depositors of the credit union; or
- (c) its continuation in business is likely to involve a loss to the members of the credit union or to the creditors of the credit union,

he shall advise the Board accordingly.

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

(3) Notwithstanding any other written law, no action or proceedings may be instituted in any court for the purpose of securing the enjoining, review or revocation of any order made or

direction given under subsection (2) or in respect of any loss or damage incurred or likely to be or alleged to be incurred by reason of such order or direction.

(4) An order made under subsection (2) shall cease to have effect -

(a) where the Board makes a further order permitting the credit union to resume business either unconditionally or subject to such conditions as it may consider necessary in the public interest or in the interests of the members and potential members of the credit union and other creditors of the credit union; or

(b) upon the expiration of the period of sixty days from the day on which it is made, unless -

(i) the Board extends the order for a period not exceeding a further sixty days;

(ii) in the case of a credit union, an application is made to the High Court for the appointment of a receiver or manager on behalf of the members; or

(iii) a petition is made to the High Court by the Inspector, on authorization of the Board, for the winding-up of the credit union on behalf of its members.

(5) For the purposes of subsection (4)(b)(iii), the High Court may order the winding-up of a credit union in accordance with the Companies Act subject to the modification that the credit union may be ordered to be wound up on the petition of the Inspector on behalf of its members.

(6) Any person who directly or indirectly prevents the Central Bank from having access to a credit union, its books, records or other documents, including electronically stored information, or fails to make them available, commits an offence

and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for five years.

Involuntary  
liquidation

75. (1) Where the Central Bank –

- (a) in its discretion determines that all attempts at rehabilitation of a credit union have failed;
- (b) finds that the credit union is insolvent;
- (c) revokes the credit union's operating certificate; or
- (d) is directed by the Commissioner in writing that a credit union should be wound-up under the provisions of the Co-operatives Societies Act,

the Central Bank shall issue an order to liquidate the credit union.

(2) No credit union shall conduct the business of a credit union when it has been placed in involuntary liquidation.

(3) Under the direction of the liquidator the credit union shall continue to discharge its debts, pay operating expenses, collect money owed to it, distribute its assets and perform all acts required to wind up its affairs.

(4) Notwithstanding subsection (1), the Central Bank may petition the High Court for the winding-up of a credit union in accordance with the Companies Act.

(5) No petition shall be presented except by leave of the Court, and such leave shall not be granted unless -

- (a) a *prima facie* case has been established to the satisfaction of the Court; and
- (b) security for costs for such amount as the Court may think reasonable has been given.

(6) The procedure governing petitions made to the High Court in this section and for the enforcement of orders made hereunder and for all matters incidental thereto shall be that provided for by the Companies Act and any other written law.

(7) Notwithstanding subsection (6), a petition by the Central Bank may be heard *ex parte*.

76. (1) A credit union may voluntarily liquidate and wind up its affairs subject to the prior approval of the Central Bank. Voluntary liquidation

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

(3) A credit union that wishes to commence a voluntary liquidation, shall submit to the Central Bank –

- (a) a copy of the resolution of its membership to voluntarily wind up the credit union;
- (b) audited financial statements of the credit union for the periods specified by the Bank;
- (c) the external auditor's report in relation to the financial statements referred to in paragraph (b); and
- (d) such other information as the Bank may require.

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

(5) Where a credit union approves a resolution for voluntary winding-up, it shall –

- (a) within fourteen days, give notice of the resolution –
  - (i) in writing to the Central Bank;
  - (ii) by advertisement in the *Gazette* and at least one daily newspaper in circulation in Trinidad and Tobago and by any other means the Central Bank considers appropriate;

(iii) give notice of the resolution to its members in such form and containing such information as the Central Bank may require.

(b) it shall apply to the Court for winding-up.

(6) Upon receipt of an order of the Court approving an application for voluntary liquidation of a credit union a copy of such order shall be filed with the Central Bank by the credit union and the Bank shall cancel the credit union's operating certificate.

(7) The Central Bank shall inform the Commissioner in writing that the credit union's operating certificate has been cancelled and direct that the credit union be deregistered.

Reconstruction  
of credit unions

77. Reconstruction of a credit union may be effected by –

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

Amalgamation of  
credit unions

78. (1) Any two or more credit unions may, with the approval of the Central Bank, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for such purpose, amalgamate as one credit union.

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

(3) Upon completion of the procedure set out in subsection (2), applications shall be made to the Commissioner and the Central Bank in that order in the name of the amalgamated credit union.

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

(5) The requirements of Schedule V shall apply to credit unions that amalgamate in accordance with this section.

79. (1) A credit union may, subject to the approval of the Central Bank, by resolution passed by not less than three-fourths of all the members present and voting at a special general meeting called for that purpose, agree to transfer its assets and liabilities to any other credit union which has agreed to the transfer. Transfers

(2) Acceptance by the transferee credit union shall be evidenced by a resolution of not less than three-fourths of the members of that credit union present and voting at a special general meeting called for such purpose.

(3) On the passing of the resolutions referred to in subsections (1) and (2) the transferor credit union shall apply to the Central Bank for cancellation of its operating certificate and the transferee credit union shall submit to the Central Bank a copy of its resolution agreeing to the transfer.

(4) Cancellation of the registration and the operating certificate of the transferor credit union and the submission to the Central Bank of the resolution of the transferee credit union agreeing to accept the transfer shall be sufficient conveyance to vest the assets and liabilities of the transferor in the transferee.

80. (1) A credit union may, subject to the approval of the Central Bank, by a resolution passed by three-fourths of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into two or more credit unions. Divisions

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

- (a) the division of the assets and liabilities of the credit union among the new credit unions; and
- (b) proof of the satisfaction of the claims of all the creditors and such other persons who

have given notice of intention to demand payment of moneys due to them.

(2) On the passing of the resolution referred to in subsection (1) the credit union shall apply to the Central Bank for cancellation of its operating certificate and thereafter apply to the Commissioner for cancellation of its registration.

(3) Upon completion of the procedures set out in subsection (2) applications shall be made to the Commissioner and the Central Bank in that order in the names of the proposed divided credit unions.

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

Notice of amalgamation required

81. Notwithstanding sections 78, 79 and 80, no amalgamation, transfer or division of a credit union shall be effected unless –

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

Vesting of assets

82. The registration of new credit unions established pursuant to section 80 shall be sufficient to vest the assets and liabilities of the original credit union in the new credit unions in the manner specified in the preliminary resolution as confirmed under subsection (1) of that section.

Winding-up

83. In the case where a petition is made by the Inspector to the High Court for the winding-up of a credit union –

- (a) the credit union shall not carry on business during the pendency of the petition unless it is authorized to do so by the Court and in accordance with any conditions that may be specified by the Court; and

- (b) the Court, if it is of the opinion, after such inquiry it may consider necessary, that the credit union -
  - (i) is not insolvent;
  - (ii) is able to meet the minimum institutional capital requirement; and
  - (iii) is able to meet the demands of its members and its continuation in business is not likely to involve a loss to its members,

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

## **PART XII MISCELLANEOUS**

84. (1) The Central Bank may issue to any person who there is reasonable cause to believe, has committed an offence referred to in the first column of the Fourth Schedule, a Notice offering the person the opportunity to discharge any liability to conviction in respect of that offence by payment of the administrative fine specified for the offence in the fifth column on the Fourth Schedule.

Discharge of  
liability  
Fourth Schedule

(2) Administrative fines under this section shall be calculated with reference to the credit union's asset size –

- (a) where a credit union's assets are ten million dollars or lower, it shall pay twenty-five per cent of the administrative fine prescribed in the Fourth Schedule and the daily rate, where applicable, will be two hundred dollars;
- (b) where a credit union's assets exceed ten million dollars but are equal to or lower than fifty million dollars, it shall pay fifty per

cent of the administrative fine prescribed in the Fourth Schedule and the daily rate, where applicable will be five hundred dollars; and

- (c) where a credit union's assets exceed fifty million dollars but are equal to or lower than one hundred million dollars it shall pay seventy-five per cent of the administrative fine prescribed in the Fourth Schedule; and
- (d) where a credit union's assets exceed one hundred million dollars, it shall pay one hundred percent of the administrative fine prescribed in the Fourth Schedule.

(3) Where a person fails to pay the administrative fine referred to in subsection (1) or where he continues to commit the offence after the expiration of twenty-one days following the date of receipt of the notice, the credit union shall be liable on summary conviction for the original offence committed.

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

(5) A notice under subsection (1) shall –

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state -
  - (i) that criminal proceedings shall not be laid until the expiration of twenty-one days from the date of receipt of the notice where payment of the administrative fine is made and the

commission of the offence is discontinued;

- (ii) the amount of the administrative fine and the fact that it is to be paid to the Comptroller of Accounts; and
- (iii) the places where payment of the fine is to be made.

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

(7) The Minister may, by Order, provide for any matter incidental to the operation of this section, and in particular, any such Order may prescribe –

- (a) the form of notice under this section;
- (b) the nature of the information to be furnished to the Comptroller of Accounts along with any payment; and
- (c) the arrangements for the Comptroller to furnish to the Central Bank, information with regard to any payment or non-payment pursuant to a notice under this section.

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

Offences and penalties

(2) A person who contravenes –

- (a) any provision of this Act; or
- (b) any direction, requirement or measure given or made by the Central Bank, the Board or the Inspector,

commits an offence and the offence shall be deemed to be continued so long as the default continues.

(3) Any contravention against this Act for which no other penalty is expressly provided in the Act or in the Fourth Schedule, is punishable by a fine not exceeding thirty thousand dollars and to imprisonment for two years and in the case of continuous offence, to fine of three thousand dollars for each day the offence continues.

(4) A person who fails to comply with the provisions of section 8 or who obstructs a person in the performance of his duties under this section commits an offence and is liable on summary conviction, in the case of a credit union to a fine of thirty thousand dollars.

(5) Notwithstanding subsection (4), the Central Bank may in addition apply to the High Court for an order requiring the person to comply with the restriction or measure imposed, and on such application, the Court may so order and make any other order it thinks fit.

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

(7) In any proceedings for an offence under this Act or Regulation made thereunder where it is proved that the person charged intended to deceive, defraud or profit significantly from the offence, the penalty shall be a fine ten times the amount stipulated in subsection (2) or imprisonment for twenty years and this penalty shall be in addition to any other penalty under this Act.

(8) The High Court may, in addition to any other punishment it may otherwise impose under subsection (7) –

- (a) order the person to comply with the requirement in respect of which the person was convicted; or
- (b) where it is satisfied that as a result of the commission of the offence the convicted person acquired any monetary benefits or that monetary benefits accrued to a related

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

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

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

(11) Notwithstanding anything in any other law to the contrary any complaint relating to an offence under this Act which is triable by a Magistrate's Court in Trinidad and Tobago may be so tried if it is laid at any time within three years after the commission of the offence or within eighteen months after the relevant date.

(12) In this section, "relevant date" means the date on which evidence sufficient in the opinion of the Central Bank to justify the institution of summary proceedings comes to its knowledge.

86. (1) Any person who is aggrieved by a decision of the Central Bank or the Inspector – Appeals

- (a) to refuse an application for an operating certificate;
- (b) to revoke an operating certificate otherwise than in a case in which revocation is mandatory under section 30(9);
- (c) to restrict an operating certificate in any particular manner or to vary any restrictions of an operating certificate;
- (d) to issue compliance directions under section 65;

- (e) to give a direction under section 29(2);
- (f) to disqualify any person under section 37, from being a director or officer on the ground that he is not a fit and proper person;
- (g) to refuse a plan for approval for a merger or transfer under sections 78 and 79; and
- (h) which in the opinion of a credit union, might be contrary to any provision of this Act,

may appeal against the decision to the High Court.

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

Disapplication of provisions under the Co-operative Societies Act

87. (1) Sections 15, 18(1), (2), (3) and (4), 28, 39, 42, 43, 44, 45, 46, 47, 48, 51, 58, 59, 60, 61, 62, 63, 65, 66 and 81(f) of the Co-operative Societies Act, in so far as they apply to credit unions, are hereby revoked.

(2) Regulations 14, 29, 32, 34, 35, 36, 38, 39, 42, 47, 48, 49, 56 and 57 of the Co-operative Societies Regulations, in so far as those provisions apply to credit unions, are hereby revoked.

Transitional

88. (1) A credit union that is not, on the coming into operation of this Act, in compliance with any provision specified in the Fifth Schedule shall become compliant with that provision within the corresponding period specified in the said Fifth Schedule.

(2) Where a credit union remains non-compliant beyond the transition period, the Central Bank may take action against the credit union in accordance with this Act.

**FIRST SCHEDULE**  
**THE BUSINESS OF A CREDIT UNION**

| <b>Class of Business</b>         | <b>Activities</b>   |
|----------------------------------|---|
| <b>Share Issuance</b>            | Issuing shares to members, on such terms and conditions as may be prescribed in and standards approved by the board of directors of the credit union.                 |
| <b>Deposit Taking*</b>           | Accepting deposits from members, on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union.              |
| <b>Loans**</b>                   | Granting of loans and other credit to members on such terms and conditions as may be prescribed and standards approved by the board of directors of the credit union. |
| <b>Investment**</b>              | Credit union committing its collectively-owned resources with the investment gains or losses accruing to its own account.   |
| <b>Mortgage Business</b>         | Mortgage lending.   |
| <b>Confirming and Acceptance</b> | Confirming, accepting import and export bills for financing.  |
| <b>Trust Business</b>            | Management of trust funds, acting as trustee or contractual trust, executor or administrator, administration of pension funds and retirement plans.                   |
| <b>Transaction services</b>      | Directly or indirectly offering credit cards and debit cards.   |
| <b>Brokerage</b>                 | Acting as a broker or as a commission agent for any other financial institution, except for a financial institution within the securities industry.                   |
| <b>Other Financing Services</b>  | Loan syndication, acceptance credit, project financing, foreign exchange financing and inter-credit union financing.  |

## SECOND SCHEDULE

|  |   |
|--|---|
|  | <p><b>1. Fit and Proper Person</b></p> <p>(1) Every person who is, or is to be a member of the board of the credit union director, officer or employee of the credit union must be a fit and proper person to hold the particular position which he holds or is to hold.</p> <p>(2) In determining whether an individual is a fit and proper person to hold any particular position, regard shall be had to his probity, to his competence and soundness of judgment for fulfilling the responsibilities of that position, to the diligence with which he is fulfilling or likely to fulfill those responsibilities and to whether the interests of members of the credit union are likely to be, in any way threatened by his holding that position.</p> <p>(3) Without prejudice to the generality of the foregoing provisions, regard may be had to the previous conduct and activities in business or financial matters of the individual in question and, in particular, to any evidence that he has –</p> <ul style="list-style-type: none"><li>(a) been convicted of an offence involving fraud or other dishonesty or violence;</li><li>(b) contravened any provision under an enactment appearing to the Central Bank to be designed for protecting members of the public against financial loss due to dishonesty, incompetence or malpractice by persons concerned in the provision of banking, insurance, investment or other financial services or the management of companies or against financial loss due to the conduct of discharged or undischarged bankrupts;</li><li>(c) been delinquent in meeting payment obligations;</li></ul> |
|--|---|

- (d) engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper (whether unlawful or not) or which otherwise discredit his method of conducting business;
- (e) an employment record which leads the Central Bank to believe that the person carried out an act of impropriety in the handling of his employer's business;
- (f) engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence and soundness of judgment.

**2. Credit Union to be Fit and Proper**

(1) The credit union shall conduct its business in a prudent manner.

(2) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain institutional capital in an amount that the Central Bank considers to be –

- (a) commensurate with the nature and scale of the credit union’s operations;
- (b) appropriate to the classes of business operations in which the credit union is involved; and
- (c) sufficient to safeguard the interests of its members and potential members, having regard to the particular factors mentioned in subparagraph (3) and any other factors appearing to the Central Bank to be relevant.

(3) The particular factors referred to in

subparagraph (2)(c) are –

- (a) the nature and scale of the credit union's operations;
- (b) the classes of business in which the credit union is involved; and
- (c) the risks inherent in those operations and in the operation of any affiliate so far as is capable of affecting the credit union.

(4) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate liquidity, having regard to the relationship between its liquid assets and its actual and contingent liabilities, to the times at which those liabilities will or may fall due and when its assets mature, to the factors mentioned in subparagraph (3) and to any other factors appearing to the Central Bank to be relevant.

(5) For the purposes of subparagraph (4) the Central Bank may, to such extent as it thinks appropriate, take into account as liquid assets, assets of the credit union and facilities available to it which are capable of providing liquidity within a reasonable period.

(6) A credit union shall not be regarded as conducting its business in a prudent manner unless it makes or, as the case may be, will make adequate provision for depreciation or diminution in the value of its assets (including provision for bad or doubtful debts), for liabilities which will or may fail to be discharged by it and for losses which it will or may incur.

(7) A credit union shall not be considered as having, made adequate provision in respect of bad or doubtful debts where it does not establish an appropriate reserve (loss reserve) in respect of all such bad or doubtful debts.

(8) Where payment of principal or interest which is due and payable on any credit exposure granted by a credit union has not been made or effected for a period of three months, such credit exposure shall be considered non-performing unless it is fully secured and is in the process of collection.

(9) A credit union shall not be regarded as conducting its business in a prudent manner unless it maintains or, as the case may be, will maintain adequate systems of control of its business and records.

(10) Records and systems shall not be regarded as adequate unless they are such as to enable the business of the credit union to be prudently managed and the credit union to comply with the duties imposed on it by or under this Act; and in determining whether those systems are adequate, the Central Bank shall have regard to the functions and responsibilities in respect of them of any such directors of the credit union as are mentioned in paragraph (3)(c).

(11) Subparagraphs (2) to (10) are without prejudice to the generality of subparagraph (1).

### **3. Integrity and Skills**

The business of the credit union will be carried on with integrity and the professional skills appropriate to the nature and scale of its activities.

### **4. Other Matters for consideration**

The credit union shall conduct its business in a manner that does not threaten the credit union sector in Trinidad and Tobago.

**THIRD SCHEDULE**

**TECHNICAL SOLVENCY TEST FOR CREDIT UNIONS**

|                 | <b>Line item</b>   | <b>YEAR</b> |
|-----------------|--|-------------|
|                 | ADJUSTED ASSETS:   |             |
|                 | Total assets   |             |
| <b>Add:</b>     | Allowance for loan losses  | -           |
|                 | <b>Total adjusted assets (A)</b>   |             |
|                 | ADJUSTED LIABILITIES:  |             |
|                 | 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>1</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> | <b>(Net Value of Assets/Total Members Deposits +</b>                       |             |
| <b>=</b>        | <b>Withdrawable Shares) x 100</b>  |             |

<sup>1</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.

**FOURTH SCHEDULE**

**ADMINISTRATIVE FINES**

**OFFENCES IN RESPECT OF WHICH CRIMINAL  
LIABILITY MAY BE DISCHARGED BY PAYMENT OF AN  
ADMINISTRATIVE FINE**

| Section<br>of the Act | General description<br>of Offence  | Criminal<br>Penalty                                      | Administrative<br>Fine | Administrative<br>Fine |
|-----------------------|--|--|------------------------|------------------------|
|                       |  | (Applicable<br>only on<br>summary<br>conviction)         | (Credit Union)         | (Individual)           |
| Section<br>26(3)      | Failure of a credit union to submit to the Central Bank copies of documents required within 30 days of the passage of the Act. | \$25,000 plus \$2,500 per day that the offence continues | \$6,250                | \$6250                 |
| Section<br>40(1)      | Failure of a credit union to appoint any committee required by the Central Bank.   | \$25,000   | \$6,250                |                        |
| Section<br>37(6)      | Failure of a credit union to make an annual declaration to the Central Bank.   | \$20,000 plus \$2,000 per day that the offence continues | \$5,000                |                        |
| Section<br>39(2)      | Failure of the board of a credit union to carry out their duties as listed under this section.                                 | \$25,000   | \$6,250                |                        |

| Section of the Act | General description of Offence   | Criminal Penalty   | Administrative Fine | Administrative Fine |
|--------------------|--|--|---------------------|---------------------|
| Section 64(2)      | Acquisition by a credit union of real estate or any interest in real estate except as prescribed in this section and Regulations.  | \$25,000   | \$6,250             |                     |
| Section 58(5)      | Beneficially holding real estate or any interest in real estate acquired (by a credit union) in the course of satisfaction of debts due to it for longer than five years from the date of acquisition.   | \$25,000 plus \$2,500 per day that the offence continues | \$6,250             |                     |
| Section 61         | Credit union incurring a credit exposure by any member, entity or related party an aggregate amount that exceeds twenty-five per cent of its capital base except as prescribed by this section and Regulations.  | \$25,000 plus \$2,500 per day that the offence continues | \$6,250             |                     |
| Section 62(5)      | Failure of a credit union to take action as required by the Central Bank regarding credit exposures to related parties which are in excess of the fixed limits, and of the measures that shall be taken to reduce the credit exposures that are in excess of the fixed limits. | \$20,000 plus \$2,000 Per day that the offence continues | \$5,000             |                     |

| Section of the Act | General description of Offence   | Criminal Penalty   | Administrative Fine | Administrative Fine |
|--------------------|--|--|---------------------|---------------------|
| Section 54(1)      | Failure of a credit union to comply with the restrictions on dividends as set out in this subsection.  | \$25,000   | \$6,250             |                     |
| Section 73(2)      | Failure of a credit union to obtain the prior approval of the Central Bank before establishing, acquiring or opening a branch outside Trinidad and Tobago. | \$25,000   | \$6,250             |                     |
| Section 76(6)      | Failure of a credit union to publish notice of the passing of a resolution for voluntary winding-up and to give notice to its members.                     | \$25,000 plus \$2,500 per day that the offence continues | \$6,250             |                     |
| Section 48(2)      | Failure of the credit union to apply the one-fifth limit to individual shareholding.   | \$25,000 plus \$2,500 per day that the offence continues | \$6,250             |                     |
| Section 53(3)      | Failure of a credit union to publish dormant accounts.   | \$15,000 plus \$1,500 per day that the offence continues | \$3,750             |                     |
| Section 33         | Failure of a credit union to submit to the Inspector within the prescribed time audited financial statements signed by two directors of the credit union.  | \$25,000 plus \$2,500 per day that the offence continues | \$6,250             |                     |
| Section            | General description of   | Criminal   | Administrative      | Administrative      |

| of the Act    | Offence   | Penalty  | Fine    | Fine    |
|---------------|---|----------|---------|---------|
| Section 10(1) | Failure of a credit union to comply with a notice issued by the Central Bank to require information.  | \$20,000 | \$5,000 | \$5,000 |
| Section 10(3) | Failure of a credit union to comply with a notice to verify information   | \$25,000 | \$6,250 |         |
| Section 43(1) | Failure of a credit union to give notice to the Inspector of the removal or replacement of an auditor, and failure to give reasons to the Central Bank for such removal or replacement. | \$25,000 | \$6,250 |         |
| 32(1)         | Failure of a credit union to comply with additional reporting requirements as the Central Bank may prescribe in addition to audited financials  | \$15,000 | \$3,750 |         |

**FIFTH SCHEDULE**  
**TRANSITION PERIODS**

| Section of the Act | Provision  | Transition Period  |
|--------------------|--|--|
| 22(3)              | Credit unions carrying on any activity other than business of a credit union above the limits act out in this Act e.g., non-financial activities | 5 years  |
| 37(5)              | Mandatory term limits for board members  | 18 months  |
| 37                 | Minimum qualification for board members and Fit and Proper requirements  | 2 years for existing board members;<br>immediate for new board members |
| 42                 | Appointment of External Auditor  | 2 years  |
| 55                 | Institutional Capital  | 3 years  |
| 63                 | Borrowings   | 2 years  |
| 56                 | Liquidity  | 2 years  |
| 58(4)              | Substantial Investments  | 5 years  |
| 64(2)              | Real Estate  | 5 years  |
| 61                 | Credit Exposures   | 5 years  |
| 54(3)              | Dividends or distributions from equity pursuant to a plan approved by the Central Bank   | 3 years  |

