

CHAPTER 12.06

CO-OPERATIVE SOCIETIES ACT

Revised Edition

Showing the law as at 31 December 2022

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

• Act • Subsidiary Legislation •

ACT

(Act 28 of 1999)

Act 28 of 1999 .. in force 11 September 1999

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CHAPTER 12.06
CO-OPERATIVE SOCIETIES ACT

AN ACT to make new provision with respect to the registration, supervision and management of certain societies, the members of which have a common bond of philosophy and socio-economic objectives and for related purposes.

Commencement [11 September 1999]

PART 1
PRELIMINARY

1. Short title

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

2. Interpretation

(1) In this Act—

“**articles**” means the articles of association of a society that are submitted to the Registrar with an application for the registration of the society;

“**board**” means the board of directors or other directing body (by whatever name called) to which the management of the affairs of a society is entrusted;

“**bonus**” means a share of the profits of a registered society divided among its members in proportion to the volume of business done with the society from which the profits of the society were derived;

“**by-laws**” means the registered by-laws made by a society under this Act and includes a registered amendment of such by-laws;

“**co-operative**” or “**co-operative society**” means a body corporate registered under this Act which consists of a group of people, small or large, with a commitment to joint action on the basis of democracy and self-help in order to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part;

“**Court**” means the High Court of Justice;

“**credit union**” means a registered society whose objects and services include the promotion of thrift and the creation of a source of credit for its members for provident and productive purposes;

“**director**” means a member of the board who is elected in accordance with section 69;

“**dividend**” means a share of the profits of a registered society divided among its members in proportion to the share capital held by them;

“**member**” includes a person or registered society joining in the application for the registration of a society, and a person or registered society admitted to membership after registration in accordance with this Act and the by-laws;

“**minor**” means an individual under the age of 16 years;

“**national league**” or “**National Council**” means the apex body for registered societies established for the purposes of section 214;

“**officer**” includes a director, secretary, treasurer, or other person empowered under the regulations or by-laws to give directions in regard to the business of a registered society;

“society” means a co-operative society and includes a society registered under this Act.

(2) This Act applies to societies which are registered under this Act or deemed, by virtue of section 241, to be registered under this Act.

3. Co-operative principles

For the purposes of this Act, a society conforms to co-operative principles where—

- (a) except in the case of a secondary or tertiary society no member or delegate has more than one vote;
- (b) no member or delegate is entitled to vote by proxy;
- (c) its business is carried on primarily for the benefit of its members;
- (d) its membership is voluntary and available without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibility of membership;
- (e) the rate of dividends on share capital that it pays does not exceed the rate prescribed in the Regulations;
- (f) any surplus or savings arising out of its operation is—
 - (i) used to develop its business,
 - (ii) used to provide or improve common services to members,
 - (iii) used for the payment of dividends on share capital,
 - (iv) distributed among members in proportion to their patronage with the society,
 - (v) used to educate its members, officers, employees or the general public in the principles and techniques of economic and democratic co-operation, and
 - (vi) distributed for non-profit, charitable, benevolent or cultural purposes;
- (g) cooperation with other societies is pursued;
- (h) it provides for continuing membership education.

4. Conformity to co-operative principles

A society registered under this Act shall, while it is so registered, conform to the co-operative principles set out in section 3.

PART 2 ADMINISTRATION

5. Registrar of co-operative societies

(1) There shall be a Registrar of co-operative societies who shall have such professional, administrative and other staff as are necessary to assist him or her in the execution of his or her duties and in the exercise of his or her powers under this Act.

(2) The Registrar shall be responsible for the—

- (a) registration of all societies;
- (b) supervision of all societies;
- (c) stimulation of community awareness;

- (d) initiation and encouragement of organised activities for the development of societies;
- (e) maintenance of adequate and reliable records;
- (f) management of the Department of Co-operatives.

(3) The Registrar may, in writing, delegate any of his or her functions specified in subsection (2) to a suitably qualified member of his or her staff or to any other qualified person or body of persons connected with co-operatives and any function so delegated shall be performed in such manner as the Registrar directs.

(4) Subsection (3) does not authorise the Registrar to delegate the power of delegation that is conferred on him or her by that subsection.

6. Certificate of Registrar

(1) The Registrar may furnish a person with a certificate stating that—

- (a) a document required to be sent to the Registrar has or has not been received by him or her;
- (b) a name, whether that of a society or not, was or was not on the register;
- (c) a name, whether that of a society or not, was or was not on the register on a stated date.

(2) When this Act requires or authorises the Registrar to issue a certificate or to certify any fact, the Registrar or other person delegated by him or her shall sign the certificate or the certification.

(3) The signature required under subsection (2) may be printed or mechanically reproduced on the certificate or certification.

(4) A certificate or certification mentioned in subsection (2) is admissible in evidence as conclusive proof of the facts stated in the certificate or certification without proof to the office or signature of the person purporting to have signed the certificate or certification.

7. Power to refuse documents

(1) The Registrar may refuse to receive, file or register any document that in his or her opinion—

- (a) contains any matter contrary to law;
- (b) has not, by reason of any omission or error in description, been properly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains any error, alteration or erasure;
- (e) is not legible; or
- (f) is not durable.

(2) The Registrar may request in respect of a document refused under subsection (1)—

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

8. Verification of documents

Where this Act or regulations under this Act requires that a document or information contained in a document is to be submitted to the Registrar, the Registrar

may require verification of the document or information contained in the document by affidavit or otherwise.

9. Application for registration

(1) A society shall not commence or continue business unless it is registered in accordance with this Act.

(2) Subject to subsection (3) an application for registration under this Act must be submitted to the Registrar in the prescribed form and in such manner as he or she determines.

(3) An application for registration under this Act must be signed by at least—

- (a) fifty persons in the case of a Credit Union;
- (b) five persons in the case of a Workers Society;
- (c) twenty-five persons in the case of a Consumer Society;
- (d) ten persons in the case of a Housing Society;
- (e) ten persons in the case of an Agricultural Society; and
- (f) ten persons in the case of other societies not specified in paragraphs (a) to (e).

(4) An application must be accompanied by—

- (a) three copies of the proposed by-laws of the society;
- (b) the prescribed application fee; and
- (c) such other information in respect of the society as the Registrar requires.

10. Content of by-laws

(1) A registered society shall include in its by-laws provisions respecting—

- (a) conditions of membership, including—
 - (i) the rights of joint members, if any,
 - (ii) the qualification for membership and the withdrawal of members and transfer of membership,
 - (iii) the amount of the membership fee and the annual fee, if any, to be paid by members,
 - (iv) the conditions on which membership ceases or may be terminated, the disposition that may be made on cessation or termination of a member's interest and the determination of the value of the member's interest, and
 - (v) the minimum value of shares that may be held by each member;
- (b) subject to this Act, voting rights and the rights of making, amending and repealing by-laws, the right of members to vote by ballot and the manner, form and effect of votes at meetings;
- (c) directors, officers and membership of the committees of directors,
 - (i) their qualifications, terms of office and removal,
 - (ii) the filling of vacancies and
 - (iii) their powers and duties;
- (d) the address of the registered society;

- (e) the distribution of the property of the society on dissolution of the society;
- (f) the borrowing powers of the society and the procedure for exercising those powers; and
- (g) any matters, in addition to those set out in paragraphs (a) to (f) that the members consider necessary or desirable.

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

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

11. Effect of by-laws

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

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

12. Conditions for registration

(1) A society shall not be registered, or having been registered, continue to be registered under this Act—

- (a) unless its membership consists—
 - (i) in the case of financial co-operatives, of not less than 50 members, and
 - (ii) in the case of any other co-operative of not less than 5 members;
- (b) unless it is considered to be economically viable by the Registrar and has provision for equity capital expansion and continuous business growth;
- (c) unless subject to subsection (2), its membership consists solely of members of a school, club, or cultural organisation who are all under the age of 16 years;
- (d) unless there is conformity among its membership, none of whom is another society, with all the co-operative principles as set out in section 3;
- (e) unless the word “co-operative” or “Credit Union” forms part of the name of each such society, and a society whose membership falls within the description contained in paragraph (c) the words “junior co-operative” forms part of the name of such society;
- (f) unless the word “limited” is the last word of the name of a society to be registered with limited liability;
- (g) if the name of the society is identical with that of another registered society or which so nearly resembles that name as to be likely to mislead the members of the public as to its identity;
- (h) unless it has and maintains an address to which all notices and communications may be sent;
- (i) unless its by-laws are in conformity with this Act;
- (j) unless, within a reasonable time after the issue of the certificate of registration, the society paints or affixes its registered name in letters that are easily legible in a conspicuous position on the exterior of the place where the business of the society is carried on, and in the case of a

society registered under section 15, its registered name bears the words "Probationary Society".

(2) Despite anything contained in subsection (1)(c), the Registrar may register as a junior co-operative a society the substantial majority of whose members are under the age of 16 years.

(3) In the determination of the viability of a society the Registrar may have regard to—

- (a) the demand for the proposed services;
- (b) the capital base of the society; and
- (c) the membership size and potential of the society.

13. Registration of societies

(1) When the Registrar is satisfied that the application is made in accordance with this Act, he or she shall, within 3 months of the receipt of the application, register the society and its by-laws and issue that society with a certificate of registration in the prescribed form.

(2) The name under which a society is registered under this Act—

- (a) shall be published in the Gazette; and
- (b) shall be noted in the register to be known as the "Register of Societies" and which shall be kept at the office of the Registrar.

(3) Where the Registrar refuses to register a society he or she shall give the applicant reasons in writing for the refusal.

(4) The names of all societies that are registered under this Act shall be entered in the Register of Societies.

14. Effect of certificate on registration

(1) Except for a society that is deemed to be registered under this Act a society comes into existence on the date shown on its certificate of registration.

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

15. Probationary societies

(1) If the Registrar is satisfied that a society which has submitted an application for registration should not be registered as a registered society, he or she may register such society for a period not exceeding 12 months.

(2) A society registered under subsection (1) shall be termed a "probationary society" and shall be subject to such conditions as the Registrar may impose.

(3) If the Registrar is satisfied that a probationary society has made sufficient progress in complying with the conditions imposed on the society, he or she may register the probationary society as a registered society.

(4) If the Registrar is not satisfied that a probationary society has made sufficient progress in complying with the conditions imposed on that society, he or she may extend the probationary period for a further period not exceeding 12 months, or cancel the registration.

(5) If at the end of the second year the Registrar is satisfied that a probationary society has made sufficient progress in complying with the conditions imposed on that society, he or she may register that society as a registered society; otherwise he or she shall cancel the registration.

16. Capacity and powers

(1) The registration of a society renders it a body corporate, and subject to this Act and its by-laws it has the capacity, rights, powers and privileges of an individual.

(2) A society shall not carry on any business or exercise any power that it is prohibited by its by-laws or any written law from carrying on or exercising nor shall a society exercise any of its powers in a manner contrary to its by-laws.

(3) A person is not affected by, or presumed to have notice or knowledge of, the contents of a document concerning a society by reason only that the document has been filed with the Registrar or is available for inspection at any office of the society.

(4) Subject to the approval of the Registrar and unless the societies have agreed in writing a person shall not be a member of more than one registered society whose primary object is to grant loans to its members.

17. Registered office

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

(2) The directors of a society may change the address of the registered office.

(3) The Registrar must be informed of any such change of address within one month of such change.

18. Maintenance of mandatory records

(1) Every society shall have its certificate of registration permanently displayed at its registered office.

(2) Without prejudice to subsection (1), there shall be made available at all reasonable times at the registered office of the society—

- (a) a copy of this Act and any regulations made thereunder;
- (b) a copy of the by-laws of the society;
- (c) the register of members;
- (d) all minutes of meetings of members and resolutions of members;
- (e) copies of all notices of directors and notices of change of directors;
- (f) a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the society with the dates on which each person became or ceased to be a director;
- (g) a copy of every certificate issued to it by the Registrar;
- (h) a copy of every order of the Registrar relating to the society; and
- (i) all minutes of meetings of directors and committees.

19. Access to records

(1) The Registrar may, during the normal business hours of the society, examine any of the records specified in section 18(2).

(2) Members of a society, their agents and their legal representatives may, during the normal business hours of the society, examine any of the records specified in section 18(2)(a) to (h).

(3) A society shall give to any person specified in subsections (1) and (2) access to any record specified in section 18(2), during normal office hours of the society.

20. Suspension and cancellation of registration

(1) Subject to this Act, the Registrar may by order in writing suspend the registration of a society if he or she is satisfied that—

- (a) the society is in breach of any condition of registration;
- (b) the society is in breach of any requirement of section 3 or 12;
- (c) the society or any officer failed or refused to comply with any obligation imposed by, or any requirement of this Act, the regulations or by-laws;
- (d) any return notice or other document or fee required by this Act or the regulations to be submitted to the Registrar has not been received by him or her.

(2) The Registrar may by order in writing cancel the registration of any registered society if—

- (a) at any time it is proved that the number of members has been reduced to less than the number required for the registration of the society;
- (b) it is proved that the registration has been obtained by fraud or mistake,
but a cancellation under paragraph (a) shall not apply to a society which includes among its members one or more registered societies.

(3) An order under subsection (1) or (2) shall take effect from the date of the order.

(4) A suspension or cancellation shall not be made by the Registrar until he or she has given the society a chance to be heard; and a suspension shall not exceed 12 months.

(5) Where after a period of suspension a society has not rectified the circumstances leading to its suspension, the Registrar may cancel the registration of that society.

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

21. Seal

(1) The board may by resolution—

- (a) adopt a corporate seal; or
- (b) change the corporate seal adopted under paragraph (a).

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

22. Pre-registration contracts

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

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

(3) Where a society adopts a contract under subsection (2)—

- (a) the society is bound by the contract and is entitled to the benefits thereof as if the society had been in existence at the date of the contract and had been a party to it; and

- (b) a person who purported to act in the name of the society or on its behalf ceases except as provided in subsection (4) to be bound by or entitled to the benefits of the contract.

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

(5) If expressly so provided in the written contract, a person who purported to act for or on behalf of the society before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

PART 3 MEMBERSHIP AND MEETINGS

23. Application and qualification for membership

(1) An application for membership of a society must be submitted to the board in such form as the board approves.

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

- (a) shall be a citizen or a resident of Saint Lucia;
- (b) shall not be an undischarged bankrupt;
- (c) shall not be of unsound mind; and
- (d) shall be 16 years of age or over.

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

(4) A society shall not without permission of the Registrar register as a member a person who is a member of another society whose primary object is to grant loans to its members, neither shall a registered society become a member of another registered society of the same type.

24. Joint accounts

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

25. Membership fees and membership register

(1) A person shall not exercise the rights of membership of a society unless and until he or she has paid the prescribed membership fee and has satisfied any other requirement which may be prescribed by the by-laws.

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

- (a) the names and addresses of members; and
- (b) the date on which each member became a member and the date, if any, on which he or she ceased to be a member.

26. Liability of past and present members

(1) Subject to this Act, the liability of a current member of a society is limited to the paid shares and the unpaid amount of subscription for shares.

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

27. Withdrawal of membership

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

(2) Withdrawal of membership from a society may be by written notice addressed to the board.

(3) Withdrawal of membership of a society does not affect any existing liability of the member to the society.

28. Termination of membership by board

(1) Subject to the by-laws, the board may, by at least $\frac{2}{3}$ vote of the directors present at a meeting called for that purpose, order the termination of membership of a member of a society.

(2) Where the board terminates the membership of a member under this section—

- (a) the board shall—
 - (i) within a period of one year, purchase from the member at par value all shares in the society held by the member, and
 - (ii) pay to the member all amounts held to his or her credit, together with any interest accrued on those amounts and the amount outstanding on loans made to the society by the member with any interest accrued on those amounts,
 - (iii) request the member to settle all debts due to the society within a reasonable period;
- (b) the secretary of the society shall, within 10 days from the date on which the order is made, notify the member of the order; and
- (c) the member may appeal the order made under subsection (1) to the next general meeting of the society by giving written notice of his or her intention to appeal to the secretary within 30 days from the date he or she received notice of the order under paragraph (b).

(3) Where the member appeals under subsection (2)(c) a majority, or any greater percentage that may be specified in the by-laws, of the members present at the general meeting shall confirm or rescind the order.

(4) Where the address of a member whose membership is ordered to be terminated under subsection (1) is unknown to the society after all reasonable efforts have been made to ascertain his or her address for the purpose of making payment to him or her of all amounts held to his or her credit, the society shall transfer those amounts to its Reserve Fund.

(5) Where any amounts are transferred under subsection (4), the society shall pay those amounts to the person entitled to them on proof of his or her claim that is satisfactory to the society.

(6) Where a society transfers amounts held to the credit of a member under subsection (4), it shall immediately submit to the Registrar a return showing—

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

29. Termination of membership by members

Members may terminate the membership of a member where—

- (a) the member has received at least 10 days notice of the general meeting at which his or her membership is to be considered; and
- (b) the termination is approved by a majority or at least $\frac{2}{3}$ of the members who—
 - (i) are present at the general meeting, and
 - (ii) cast votes on the resolution.

30. Suspension of membership

The board of a registered society may by notice in writing suspend a member for a period not exceeding 3 months if they are satisfied that he or she is guilty of stated misconduct.

31. Appeal

(1) Subject to subsection (2), where a person's membership is terminated under section 28 or 29, he or she may appeal the termination to the Registrar in the prescribed manner, and the Registrar shall confirm or set aside the resolution terminating the membership.

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

(3) Where a person appeals the termination of his or her membership under section 28(2)(c) or this section, despite the resolution terminating his or her membership, he or she continues to be a member until the termination of his or her membership is confirmed by the meeting of members under section 28(3) or by the Registrar under this section, as the case may be.

32. Re-admittance

A person whose membership is terminated under section 28 or 29, may be re-admitted to membership only by a $\frac{2}{3}$ majority vote of members present and voting at a general meeting.

33. Voting rights

(1) A society that is a member of another society shall exercise its voting rights in that other society through one of its members duly appointed in that behalf.

(2) Delegates elected in accordance with the by-laws of a society may, unless otherwise provided in the by-laws, exercise at annual and special meetings of the society all the powers of members, and in such cases all references in this Act to the exercise of powers by members shall be deemed to include the exercise of powers by delegates.

34. Representative of member who is not an individual

(1) Where a registered society is a member of another registered society, the latter society shall recognise any individual authorised by a resolution of the directors of the former society to represent it at meetings of the latter society.

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

35. Voting procedure

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

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

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

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

36. Place of meeting

General meetings of members must be held in Saint Lucia—

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

37. Members not to exercise rights until due payment

A member of a registered society shall not exercise the rights of a member unless he or she has made such payment to the society in respect of membership or acquired such interest in the society as are prescribed by the regulations or by-laws.

38. First general meeting

(1) This section does not apply to a society continued under this Act.

(2) Within 2 months of the date of its registration, a society shall hold a general meeting at which all members are entitled to be present and to vote.

(3) Despite subsection (2), where the board applies to the Registrar, he or she may extend the time for holding the general meeting.

(4) The business at the general meeting mentioned in subsection (2) must include—

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

39. Annual general meeting

(1) A society shall hold an annual meeting in each year not later than 3 months after the end of the financial year of the society.

(2) Despite subsection (1) and despite that the time for holding a general meeting as required by this section has expired, where the Registrar receives a written request from the board, he or she may authorise the society to hold the annual general meeting at any date not later than 6 months after the end of the financial year of the society if he or she considers it appropriate.

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

40. Special meetings

- (1) The board may call a special meeting of members at any time.

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

(3) The board shall call the special meeting mentioned in subsection (2) within 20 days of their receipt of the request and the special meeting is required to dispose of the specific business outlined in the request.

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

- (a) for the purpose of reporting to the members the results of any audit, examination or other investigation of the society's affairs ordered or made by him or her; or
- (b) where the society fails to hold an annual general meeting in accordance with section 39(1) or 39(2), for the purpose of enabling members to secure any information regarding the affairs of the society that they are entitled to receive under this Act and to deal with any matters affecting the society.

41. Meeting called by Registrar

- (1) Where—

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

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

(2) Despite subsection (1), the Registrar may order that the quorum required in this Act or the by-laws be varied or dispensed with at a general meeting called under this section.

- (3) A general meeting called under this section is a valid meeting.

42. Resolution in lieu of meeting

- (1) Except where a written statement is submitted by an auditor under section 136—

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

- (ii) subject to subsection (2), is effective from the date specified in the resolution.

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

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

43. Notice of meetings

(1) A society shall give at least 10 days' notice of any annual or special meeting to its members—

- (a) by sending the notice by mail to the members, at the addresses given in the register of members; or
- (b) by inserting the notice in not less than 2 issues of a newspaper circulating in Saint Lucia and posting the notice in a place that, in the opinion of the directors, is prominent and accessible to members.

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

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

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

(4) The proceedings or the business transacted at a general meeting are deemed not to be invalidated by reason only of the non-receipt by a member of notice of the meeting.

44. Fixing record date

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

- (a) entitled to receive payment of a bonus or dividend;
 - (b) entitled to participate in a distribution on liquidation; or
 - (c) for any purpose in addition to that described in paragraph (a) or (b), except the right to receive notice of or to vote at a general meeting,
- the board may fix in advance a date as the record date for the determination of members.

(2) The record date mentioned in subsection (1) is not to precede by more than 50 days the particular action to be taken.

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

(4) The record date mentioned in subsection (3) is not to precede by more than 50 days nor by less than 11 days the date on which the meeting is to be held.

(5) Where the board does not fix a record date—

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

- (i) the close of business on the day immediately preceding the day on which the notice is given, or
 - (ii) if no notice is given, the day on which the meeting is held; and
- (b) the record date for the determination of members for any purpose other than that described in paragraph (a) is deemed to be at close of business on the day on which the board passes a resolution relating to that purpose.

45. Quorum

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

(2) Except where all the members are directors, the number of members present at an annual, general or special meeting must not be less than the number of directors plus 3.

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

(4) Where a quorum is not present one hour after the time fixed for the commencement of a general meeting of members, the members present may adjourn the meeting to a time and place to be determined by the board but not later than 30 days after the date of the adjourned meeting but may not transact any other business.

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

46. Delegates

(1) Where the by-laws of a society provide for the nomination and appointment of delegates to a general meeting—

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

(2) The members who elect delegates may, at a special meeting called for the purpose or at any annual meeting—

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

47. Proposals

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

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

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

(3) Where a member submits a proposal and requests the society to include in or attach to the notice—

- (a) a statement by the member of not more than 200 words in support of the proposal; and
- (b) the name and address of the member, the society shall comply.

(4) A society is not required to comply with subsections (2) and (3) where—

- (a) the proposal is not submitted to the society at least 45 days before the anniversary date of the previous annual general meeting of members;
- (b) in the opinion of the directors, the proposal is submitted by the member primarily for the purpose of—
 - (i) enforcing a personal claim or redressing a personal grievance,
 - (ii) promoting general economic, political, racial, religious, social or similar causes;
- (c) the society, at the member's request, included a proposal in a notice of a meeting of members held within 2 years preceding the receipt of the proposal submitted under subsection (1), and the member failed to present the proposal at the meeting;
- (d) substantially the same proposal was submitted to members in the notice of a meeting of members held within 2 years preceding the receipt of the members request, and the proposal was defeated;
- (e) in the opinion of the directors, the rights conferred by this section are being abused to secure publicity.

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

(6) A society and a person acting on behalf of a society shall not incur any liability by reason only of circulating a proposal or statement in compliance with this section.

(7) Where a society refuses to include a proposal in a notice of a meeting, the society shall, within 30 days after receiving the proposal—

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

(8) Where a member claiming to be aggrieved by refusal under subsection (7) applies to the Registrar, the Registrar may suspend the holding of the meeting to which the proposal is sought to be presented and give any directives he or she considers appropriate.

(9) The society or a person claiming to be aggrieved by a proposal may apply for permission for the society to omit the notice of the meeting and, where the Registrar is satisfied that subsection (5) applies, he or she may give permission.

(10) In this section "proposal" means a notice submitted to a society under subsection (1)(a).

48. Power to make by-laws

(1) Subject to this Act and the by-laws, the members of a society may, at any annual meeting or any special meeting called for the purpose, make, amend, repeal, replace or confirm any by-laws, where written notice of the proposed making, amendment, repeal, replacement or confirmation—

- (a) is forwarded to each member of the society with the notice of the meeting at which the making, amendment, repeal, replacement or confirmation is to be considered by a majority of members present and voting at that meeting; or

- (b) is not forwarded to each member of the society with the notice described in paragraph (a) by a 3/4 majority of members present and voting at the meeting.

(2) A member may make a proposal, in the manner provided in section 47, to make, amend, repeal, replace or confirm any by-law.

49. Effective date of law

(1) A by-law has no force or effect until 3 copies of the by-law, certified to be true copies by the president and secretary of the society, are filed with the Registrar and approved by him or her.

(2) Subject to subsection (3), where a proposed by-law is certified under subsection (1) and receives the members' approval required in section 48(1), the by-law has immediate force and effect.

(3) A by-law described in subsection (2) ceases to have any force or effect on the expiration of 60 days after the date of the general meeting in which it is approved by the members, unless, within that 60 day period, the by-law is filed with the Registrar under subsection (1).

(4) Where the Registrar approves a by-law, he or she shall return to the society one copy of the by-law with his or her approval stamped on the by-law.

PART 4 MANAGEMENT

50. Board of directors

(1) Every society shall be managed by a board of directors which shall be constituted in accordance with this Act and the by-laws of the society.

(2) The board shall be constituted by not less than 5 nor more than 13 directors, as specified in the by-laws.

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

(4) A person who—

- (a) has been sentenced by a court in any country for an offence involving dishonesty and has not received a free pardon for that offence;
- (b) is in default of debt owed to the society or compounds with his or her creditors;
- (c) is certified by a medical practitioner to be of unsound mind;
- (d) is or becomes bankrupt;
- (e) is under the age of 18 years;
- (f) is not a member of the society or a duly appointed representative of a member society;
- (g) is already part of the management of another society of the same type; or
- (h) is an employee of the Co-operative Department,

shall not constitute part of the management of a society, until his or her disability is removed, but he or she may retain his or her membership of the society during the period of such disability.

(5) For the purposes of this Part "management" includes—

- (a) a person who holds membership of any committee established by a society; and
- (b) a person who is employed by the board.

51. Officers

- (1) Every society—
 - (a) is required to have a president, treasurer and a secretary; and
 - (b) may have any officers in addition to those mentioned in paragraph (a) that are provided for in the by-laws.
- (2) Subject to the by-laws—
 - (a) the board may designate the offices of the society, appoint persons as officers, specify the officers duties and delegate powers to manage the business and affairs of the society for them; and
 - (b) a director may be appointed to any office of the society.
- (3) Subject to the by-laws a person shall not be president or vice-president of a society unless he or she is a director of the society.

52. Provisional directors and elected directors

- (1) On the registration of a society, the individuals whose names appear in the application for registration as having been appointed and have consented to act as provisional directors—
 - (a) shall have all the powers and perform the duties of directors; and
 - (b) shall hold office until the first general meeting.
- (2) At the first general meeting and at every annual general meeting the directors must be elected in accordance with this Act, the regulations and the by-laws.

53. Powers of board

Subject to this Act, the regulations and the by-laws, the board shall—

- (a) exercise the powers of the society directly, or indirectly through the employees and agents of the society;
- (b) direct the management of the business and affairs of the society.

54. Committees generally

- (1) Despite sections 50 and 51, the members of the society shall elect a supervisory committee which shall perform such duties as are prescribed by the by-laws.
- (2) Despite subsection (1), the board may establish committees for the more efficient management of various aspects of the business or affairs of the Society.
- (3) A committee for the purposes of subsection (2) may consist of members of the board and other members of the society.
- (4) A committee of the board shall not—
 - (a) fill a vacancy among the directors;
 - (b) declare a bonus or dividend;
 - (c) approve any financial statement of the society;

- (d) submit to the members any question or matter requiring the approval of members; or
- (e) make decisions where the Act or the by-laws require a $\frac{2}{3}$ majority or unanimous vote of the board.

55. Tenure of committees generally

(1) Committees appointed under section 54(2) shall hold office for a period not exceeding one year.

(2) A member of a committee appointed under section 54(2) may be removed by resolution of the society or of the board, as the case may be.

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

(4) A committee shall—

- (a) fix its quorum at not less than a majority of its members;
- (b) keep minutes of its proceedings;
- (c) submit to the board at each meeting of the board or to the annual general meeting of the society, as the case may be, the minutes of the committee's proceedings since the most recent meeting of the board or of the society.

56. Credit committee

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

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

(3) The credit committee shall consist of the number of members fixed by the by-laws, which shall be no fewer than 3.

(4) A person who is a member of the board or of the supervisory committee or who is an employee of the credit union shall not be a member of the credit committee.

(5) A majority of the credit committee, not including the secretary or treasurer, constitutes a quorum.

(6) A member entitled to vote at an election of members of the credit committee, if he or she votes, shall cast at the election a number of votes equal to, or less than, the number of members of the credit committee to be elected, and the member shall distribute the votes among the candidates in such manner as he or she sees fit, but no candidate shall receive more than one vote from each member.

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

(8) The by-laws of the credit union may provide for the election and retirement of members of the credit committee in rotation so that no member of the credit committee shall be elected for a term of more than 3 years but a person shall not serve as a member of the credit committee of a society for more than 2 consecutive terms or an aggregate of 6 successive years.

57. Duties of credit committee

The credit committee shall consider all applications for loans and may make recommendations to the board in respect of the applications and perform such duties as are prescribed by this Act, the regulations and the by-laws of the credit union.

58. Approval of loans

(1) The board may, upon such terms and conditions as it specifies, authorise the credit committee to approve loans to members.

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

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

(4) The responsibilities and duties of any person authorised to approve loans under subsection (1) are concurrent with the responsibilities and duties of the credit committee.

59. Credit committee reports

(1) The credit committee shall—

- (a) meet at least once every month;
- (b) keep minutes of its meetings;
- (c) submit a report to the board stating—
 - (i) the number of loan applications received,
 - (ii) the number and category of loans granted,
 - (iii) the security obtained for the loans granted,
 - (iv) applications denied, and delinquent loans; and
- (d) submit an annual report on the matters referred to in paragraph (c) to the annual meeting of the credit union.

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

60. Removal of member of credit committee

(1) The members may, by resolution passed by $\frac{2}{3}$ of the votes cast at a general meeting called for the purpose, remove a member of the credit committee before the expiration of his or her term of office, and shall at that meeting elect another member in place of the first mentioned member for the unexpired portion of his or her term.

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

(3) The member of the credit committee to be removed under this section has the right to make such representations to the meeting regarding the resolution for his or her removal as he or she thinks fit, and may be represented by an attorney-at-law or an agent.

61. Removal of member of credit committee by board

When a member of the credit committee fails to attend 3 consecutive meetings without, in the opinion of the board, having reasonable cause or fails to perform any of the duties allotted to him or her as a member of the committee, his or her position on the committee may be declared vacant by the board which may then appoint a qualified person to fill the vacancy until the next annual meeting of the credit union.

62. Supervisory committee

(1) Every credit union shall have and where thought advisable a society may have a supervisory committee which shall be elected by its members at the annual general meeting.

(2) The members of a supervisory committee shall hold office for such time as the by-laws provide and until their successors are elected.

(3) The supervisory committee shall consist of the number of members fixed by the by-laws, which shall be not fewer than 3.

(4) A person who is a member of the board or credit committee or who is an employee of the credit union or other society shall not be a member of the supervisory committee.

(5) A majority of the supervisory committee constitutes a quorum.

(6) A member entitled to vote at an election of members of the supervisory committee if he or she votes, shall cast a number of votes equal to or less than the number of the members of the supervisory committee to be elected, and the member shall distribute the votes among the candidates in such manner as he or she sees fit, but no candidate shall receive more than one vote from each member.

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

(8) The by-laws of the credit union or other society may provide for the election and retirement of members of the supervisory committee in rotation, but in that case no member shall be elected for a term of more than 3 years, and a person shall not serve as a member of the supervisory committee of a society for more than 2 consecutive terms or an aggregate of 6 successive years.

63. Duties of supervisory committee

The supervisory committee shall examine the books of the credit union or other society, confirm the cash instruments, property and securities of the credit union or other society and confirm the deposits of the members and perform such other duties as are prescribed by this Act, the regulations and the by-laws of the credit union or other society.

64. Removal of member of supervisory committee

When a member of the supervisory committee fails to attend 3 consecutive meetings of the committee without, in the opinion of the supervisory committee, having a reasonable cause therefor, or fails to perform any of the duties allotted to him or her as a member of the committee, his or her position on the committee may be declared vacant by the remaining members of the committee who may appoint a qualified person to fill the vacancy until the next annual meeting of the credit union or other society.

65. Clerks

The board may appoint such persons as it considers necessary to assist the supervisory committee in its duties, and pay those persons such remuneration as it thinks fit.

66. Misappropriation

(1) When the supervisory committee is of the opinion that the funds, securities or other property of the credit union or other society have been misappropriated or misdirected, or in the event that the by-laws of the credit union, or other society, this Act or the Regulations have been contravened by the board, the credit committee or a member of the credit committee or an officer or employee engaged by the board the supervisory committee shall inform the Registrar in writing.

(2) The supervisory committee shall in consultation with the board appoint an auditor or some other body to assist in determining whether any of the funds, securities or other property of the credit union or other society have been misappropriated or misdirected and the remuneration of any auditor or other body so appointed shall be determined by the supervisory committee and paid by the credit union or other society.

(3) In the event of a misappropriation or misdirection or a suspected misappropriation or suspected misdirection as referred to in subsection (1), the supervisory committee may suspend any member of the board.

(4) The supervisory committee shall request the board to summon a general meeting of the members to be held within 14 days after the suspension referred to in subsection (3); and where the board fails to summon such a meeting the supervisory committee shall summon the meeting within 7 days after the expiry of the period of 14 days.

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

(6) The members of the credit union or other society may, by resolution, dismiss from office any person suspended under subsection (3), and, when the members of the credit union or other society do not dismiss from office a person so suspended, that person shall be reinstated.

67. Meetings

(1) The supervisory committee shall meet at least once every month, and shall at each such meeting examine the affairs of the credit union or other society.

(2) The supervisory committee shall keep minutes of its meetings and shall—

- (a) within 7 days of each meeting report the results of the meeting in writing to the board; and
- (b) submit a written report to the annual meeting of the members of the credit union or other society.

68. Removal of members of supervisory committee

(1) The members may, by resolution passed by $\frac{2}{3}$ of the votes cast at a general meeting duly called for that purpose, remove a member of the supervisory committee before the expiration of his or her term of office, and shall by votes cast at the meeting elect another member in his or her stead for the unexpired portion of his or her term.

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

(3) The member of the supervisory committee removed under this section has the right to make representations to the members regarding the resolution for his or her removal as he or she thinks fit, and may be represented by an attorney-at-law or an agent.

69. Election of directors

(1) Subject to section 70 and subject to the regulations and the by-laws—

- (a) the election of directors must take place annually at the annual general meeting;
- (b) the directors hold office until the conclusion of the meeting at which their successors are elected, and are eligible for re-election;

- (c) where the number of nominees exceeds the number of directors to be elected, the election of directors must be by secret ballot;
- (d) every member has the right to vote for the number of directors to be elected and any ballot that contains the names of more than the number to be elected is void;
- (e) where there are vacancies on the board but the remaining directors constitute a quorum, the board may appoint a member to fill any such vacancy;
- (f) where there is a vacancy on the board and there is not a quorum of directors, the remaining directors shall call a special general meeting for the purpose of electing members to fill any vacancy.

(2) Where an election of directors required by this Act, the regulations or the by-laws does not take place at the proper time, the directors then in office shall continue in office until their successors are elected.

(3) Subject to the by-laws of a society, not more than $\frac{1}{3}$ of the directors may be employees of a society.

(4) Unless a reasonable excuse is received by the meeting, a person shall not be elected a director if he or she is not present at the meeting at which the election is being conducted.

70. Tenure of directors

(1) Subject to subsection (2) the directors of a society shall be elected for a term of 3 years, but a person shall not serve as a director of a society for more than 2 consecutive terms or an aggregate of 6 years.

(2) A director who has served as a director for 2 consecutive terms or for an aggregate period of 6 years as a director and is therefore not qualified to hold office under subsection (1), is eligible for re-election as a director at the expiration of one year after leaving office as director.

(3) After the commencement of this Act, the boards of all societies shall resign at their next annual general meeting and new boards shall be elected on a rotational basis as follows—

- (a) at least $\frac{1}{3}$ of the directors to serve for 1 year,
 - (b) at least $\frac{1}{3}$ of the directors to serve for 2 years,
 - (c) the remainder of the directors to serve for 3 years,
- thereafter, each elected director shall serve for a term of 3 years.

71. Borrowing powers of board

(1) Subject to the by-laws, the board may without authorisation of the members of a society—

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

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

(3) The directors shall send, in the manner provided in section 43, a notice of a special meeting to consider the sale, lease or exchange mentioned in subsection (2) to each member.

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

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

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

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

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

72. Validity of acts of directors, and officers

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

73. Indemnification of directors

(1) Subject to subsections (2) and (3), a society may indemnify—

- (a) a director or officer of the society;
- (b) a former director or officer of the society;
- (c) a person who acts or has acted at the request of the society as a director or officer of a body corporate of which the society is or was a member or a creditor,

against costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of his or her being or having been a director or officer of the society or body corporate.

(2) A society may indemnify a director, officer, or other person only where that person—

- (a) acted honestly and in good faith with a view to the best interest of the society;
- (b) in the case of a criminal, civil or administrative action or proceeding that is enforced by a monetary penalty, had reasonable grounds for believing that the conduct was lawful.

(3) A society shall not indemnify a director, officer or other person mentioned in subsection (1) with respect to an action by or on behalf of the society to obtain a judgment in its favour to which that person is made a party by reason of his or her being or having been a director or an officer of the society, against costs, charges and expenses reasonably incurred by that person in connection with the action unless—

- (a) the society has the approval of the court; and
- (b) that person fulfils the conditions prescribed in subsection (2).

(4) Despite subsections (1) to (3), a society shall indemnify a director, officer or other person mentioned in subsection (1) who has been successful in the defence of a

civil, criminal or administrative action or proceeding to which that person is made a party by reason of his or her being or having been a director or officer of the society or body corporate against costs, charges and expenses reasonably incurred by that person with respect to the action or proceedings.

(5) A society or a director, officer or other person mentioned in subsection (1), may apply to the court for an order approving the indemnity and the court may make the order.

(6) On an application under subsection (5) the court may order notice to be given to an interested person, and that interested person is entitled to appear and be heard in person or by an attorney-at-law.

74. Duty of care of directors and officers

Every director and officer of a society in exercising his or her powers and discharging his or her duties shall—

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

75. Ambit of director's duty

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

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

76. Liability of directors

(1) Where directors vote for, consent to a resolution authorizing, or approve by any other means—

- (a) the purchase of shares of another society contrary to section 94;
- (b) the payment of a dividend on shares contrary to section 123;
- (c) the payment of a bonus contrary to section 123;
- (d) a loan or guarantee or the giving of financial assistance contrary to section 115;
- (e) a payment of an indemnity described in section 73 to a director or a former director, without the approval of the court required by subsection (3) of that section; or
- (f) an act not consistent with the purpose of the society as set out in its by-laws and with respect to which the society has paid compensation to a person,

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

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

- (a) the society is insolvent; or
- (b) the payment of a bonus or dividend or the lending of money would make the society insolvent.

(3) The liability imposed by subsection (1) is in addition to and not in derogation from a liability imposed on a director by any other law.

(4) For the purpose of this section, a director who is present at a meeting of directors or of a committee is deemed to have cast an affirmative vote, given consent to a resolution or given the approval mentioned in subsection (1), unless—

- (a) the director's dissent is entered in the minutes of the meeting; or
- (b) the director's written dissent is—
 - (i) delivered to the secretary of the meeting before its adjournment, or
 - (ii) delivered or sent by registered mail to the registered office of the society immediately after the adjournment of the meeting.

(5) A director who votes for a resolution mentioned in subsection (1) is not entitled to dissent under subsection (4).

(6) Where a director is not present at a meeting of directors or of a committee at which a vote, resolution or approval mentioned in subsection (1) is cast or given, he or she is deemed to have cast an affirmative vote, consented to the resolution or given approval, unless, within 14 days after becoming aware of the proceedings, the director delivers or sends by registered mail his or her written dissent to the registered office of the society.

(7) On receipt of a written dissent, the secretary of the society shall—

- (a) certify on the written dissent the date, time and place it is received; and
- (b) keep the written dissent in the minutes of the meeting at which the resolution was passed.

(8) An action to enforce a liability imposed in subsection (1) is not to be commenced after 2 years from the date of the meeting at which the vote, resolution or approval was taken or given.

(9) In an action to enforce a liability imposed in subsection (1), the Court may, on the application of the society or a defendant—

- (a) join as a defendant a person who received a benefit as a result of the resolution complained of; and
- (b) make the person mentioned in paragraph (a) liable to the society jointly and severally with the directors to the extent of the amount paid to him or her.

(10) A director is not liable under subsection (1) where he or she—

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

(11) A director who is found liable under subsection (1) is entitled to apply to a court for an order compelling a member or other recipient to pay or deliver to the director any money or property that was paid or distributed to the member, or other recipient contrary to section 94, 115 or 123.

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

- (a) order a member or other recipient to pay or deliver to a director any money or property that was paid or distributed to the member or other recipient contrary to section 94, 115 or 123; or
- (b) make an order, other than that described in paragraph (a), that it considers appropriate.

77. Misuse of confidential information

A director or an officer, or an associate of a director or an officer, who, in connection with a transaction relating to shares of a society or a debt obligation of a society, makes use of confidential information for the benefit or advantage of himself or herself or an associate that, if generally known, might reasonably be expected to affect materially the value of the share or the debt obligation—

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

78. Material contracts

(1) Subject to subsection (10), a director or officer of a society who—

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

shall disclose in writing to the society, or request to have entered in the minutes of meetings of directors, the nature and extent of his or her interest.

(2) The disclosure required by subsection (1) must be made in the case of a director—

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not then interested in the proposed contract at the first meeting after he or she becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after he or she becomes so interested; or
- (d) if a person who is so interested in a contract becomes a director, at the first meeting after he or she becomes a director.

(3) A disclosure required by subsection (1) must be made in the case of an officer who is not a director—

- (a) immediately after he or she becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of the board;
- (b) if the officer becomes interested after a contract is made, immediately after he or she becomes so interested; or
- (c) where he or she has an interest in a contract before becoming an officer, immediately after he or she becomes an officer.

(4) If a material contract or proposed material contract is one that in the ordinary course of the society's business would not require approval by the directors or

members, a director or officer shall disclose in writing to the society or request to have entered in the minutes of meetings of the board the nature and extent of his or her interest after he or she becomes aware of the contract or proposed contract.

(5) A director referred to in subsection (1) may take part in discussions to consider, or vote on a resolution to approve a contract that he or she has an interest in, if the contract—

- (a) is an arrangement by way of security for money lent by him or her to the society or obligations undertaken by him or her for the benefit of the society or a member of the society;
- (b) is a contract that relates principally to his or her remuneration as a director, officer, employee or agent of the society or a member of the society;
- (c) is a contract for indemnity or insurance under section 73.

(6) Where a director is not entitled to vote at a meeting under subsection (5) and his or her presence is required to constitute a quorum at a meeting of directors, a decision of the directors is deemed not to be invalid only by reason of the absence of the director.

(7) For the purposes of this section, a general notice to the directors by a director or officer declaring that he or she is to be regarded as interested in any contract made with that person is a sufficient declaration of interest in relation to any contract made with that person.

(8) Where—

- (a) a director or officer discloses his or her interest in accordance with this section; and
- (b) the contract in which the director or officer has a material interest—
 - (i) is approved by the directors or members, and
 - (ii) is reasonable and fair to the society at the time it was approved,

the material contract is neither void nor voidable by reason only of that relationship or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of the board or committee that authorised the contract.

(9) Where a director or officer of a society fails to disclose his or her interest in a material contract in accordance with this section a court may, on the application of a society or a member of the society, set aside the contract on any terms that the court considers appropriate.

(10) This section does not require the disclosure of an interest in a contract or transaction that is of a type available to and customarily entered into between the society and its members.

79. Meetings of directors generally

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

(2) The president—

- (a) may call a meeting of directors at any time; and
- (b) on the written request of at least 2 directors, shall call a meeting within 14 days of the receipt of the request.

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

(4) Subject to the by-laws, a notice of a meeting of directors need not specify the purpose of or other business to be transacted at the meeting.

(5) A director may in any manner waive a notice of a meeting of directors.

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

(7) Where the time and place of an adjourned meeting is announced at the original meeting, notice of an adjourned meeting of directors is not required to be given.

80. Meetings by telephone etc

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

- (a) a telephone system; or
- (b) a communication facility other than a telephone, that permits all persons participating in the meeting to hear and speak to each other, and a person so participating is deemed to be present at that meeting.

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

- (a) all the directors consent to the resolution in writing; and
- (b) the consent is filed with the minutes of the proceedings of the directors.

81. Attendance at meetings

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

(2) Where a director—

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

he or she is entitled to submit to the society a written statement giving the reason for his or her resignation or the reasons why he or she opposes any proposed action or resolution.

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

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

82. Inaugural meeting of directors

(1) Subject to subsection (5), the directors shall hold a meeting within 10 working days after the issue of the society's certificate of registration.

(2) The directors may, at the meeting mentioned in subsection (1)

- (a) pass resolutions establishing policies of the society;
- (b) adopt forms of corporate records;

- (c) appoint officers;
- (d) authorise the issue of securities;
- (e) appoint an auditor to hold office until the first general meeting of the members;
- (f) make banking or other financial arrangements;
- (g) appoint authorised signing officers;
- (h) adopt operating policies; and
- (i) transact any other business.

(3) A director may call the meeting of directors mentioned in subsection (1) by giving not less than 5 days' notice of the meeting to each director, stating the time and place of the meeting.

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

(5) This section does not apply to a society that is deemed to have been registered under this Act.

83. Director ceasing to hold office

- (1) A director ceases to hold office when he or she—
 - (a) dies or resigns;
 - (b) is removed in accordance with section 84; or
 - (c) is no longer qualified in accordance with this Act.
- (2) A resignation of a director becomes effective on—
 - (a) the date when the resignation was received; or
 - (b) the date specified in the resignation.

84. Removal of directors

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

(2) A vacancy created by the removal of a director may be filled at the meeting of the members at which the director is removed or where not so filled, may be filled under section 69(1)(e).

85. Notice of change in directors

(1) Within 30 days after a change is made in its directors, a society shall send to the Registrar a notice in the prescribed form setting out the change and the Registrar shall file the notice.

(2) Despite subsection (1), where a society sends the annual return in accordance with section 141, within 30 days after a change is made in its directors, it is not required to send the notice required by this section.

86. Declaration by Directors and officers

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

- (a) faithful performance of duties;

- (b) secrecy of transactions with members; and
- (c) faithful and loyal support of the society.

87. Bonding

The directors may require that every person appointed to an office who receives, manages or handles goods or merchandise or manages or handles the expenditure of money on behalf of the society shall give to the directors, before entering on his or her duties as an officer, security or a bond in the prescribed amount.

88. Remuneration of Directors

(1) A director or a member of a committee is not entitled to be paid any remuneration in connection with his or her duties as a director or committee member on behalf of a society or his or her attendance at meetings.

(2) Directors and members of committees may be reimbursed for expenses incurred by reason of the performance of their duties and functions as directors or members of committees.

(3) A society may purchase and maintain insurance for the benefit of a director, member of a committee, officer or employee against a liability, loss and damage incurred by that person while on a duty of the society or on a mission directly related to his or her duties as a director, member of committee, officer or employee.

89. Remuneration of officers and employees

Subject to section 88 and the by-laws, the directors shall fix the salary of any officers appointed by them and shall approve a scale of remuneration for any employees of a society.

PART 5 FINANCING

90. Shares

(1) A society may sell shares to its members only, but the shares must have par value fixed by the by-laws.

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

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

91. Share capital

A society shall express its share capital in its by-laws as—

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

92. Issue of Shares

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

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

(3) A member is not liable to a society or its creditors beyond the fully paid shares and the sum remaining unpaid on the member's subscription for shares.

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

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

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

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

93. Alteration of authorised capital

(1) A society may, by special resolution, amend its by-laws to increase or decrease its capital and, for that purpose, may—

- (a) subdivide any shares;
- (b) consolidate shares into shares of a larger par value, but the par value of consolidated shares must not be greater than \$100;
- (c) cancel any shares that at the date of registration of the by-laws, have not been subscribed for or agreed to be issued and diminish the amount of its capital by the amount of the par value of the shares so cancelled;
- (d) extinguish or reduce the liability on any of its shares with respect to capital not paid up;
- (e) with or without extinguishing or reducing liability on any of its shares, cancel any paid up capital that is lost or unrepresented by available assets; and
- (f) with or without extinguishing or reducing liability on any of its shares and either with or without reducing the number of such shares, pay off any paid-up capital that is greater than the requirements of the society.

(2) The Registrar may approve a by-law mentioned in subsection (1) where he or she is satisfied that—

- (a) the by-law has been made in accordance with this Act;
- (b) the holders of all shares of the society affected by the by-law have approved the by-law by a special resolution passed by the members at a general meeting called for the purpose; and
- (c) in the case of a by-law providing for a reduction in the capital of the society—
 - (i) all creditors who are liable to be affected have been notified of the by-law and have signified their approval, or
 - (ii) appropriate steps have been taken by the society to adequately safeguard the interest of its creditors.

94. Limitation on purchase of shares

Subject to the approval of the Registrar, only a registered society may purchase more than 1/5 of the shares of another society where—

- (a) the other society is insolvent;

- (b) the proposed purchase or acquisition would not render the purchasing society insolvent; or
- (c) the proposed purchase or acquisition would not, in the opinion of the board, be detrimental to the financial stability of the society.

95. Transfer of shares generally

(1) A share may be transferred with the approval of the board to any other member at the option of the transferor, but if the transferee is not a member, he or she must be approved as a member by the board, or the general meeting according to the by-laws relating to the admission of members before the transfer can be registered; and if the by-laws require a member to hold more than one share, the transferee must acquire by the transfer, or by the transfer and allotment, the number so required to be held before the transfer can be registered.

(2) A transfer of shares shall be effected in such form as the Registrar determines.

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

(4) A transfer of a share shall not be registered nor shall any claim of the society upon the transferor be affected if made by a member indebted to the registered society without the written permission of the board, and until the transfer of a share is registered by the transferee.

96. Transfer of shares of member of unsound mind

(1) Where a member or person claiming through a registered society has become of unsound mind or is incapable of managing his or her affairs and no committee, receiver or guardian has been appointed, the society may subject to this section and section 95 transfer the share or interest of such member to any person nominated by such member for the purposes of section 100 or may pay to the person nominated a sum representing the value of the share or interest of such member ascertained in accordance with subsection (5).

(2) Subject to subsection (3), if no nominee has been appointed, the society may pay a sum representing the value High Court.

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

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

(5) For the purposes of this section and section 94, the value of any share or interest shall be represented by the sum actually paid for that share or interest by the member holding it unless the by-laws of the society otherwise provide; and where the benefits of group insurance have accrued on such share or interest, the value of such benefits shall be the amount actually received by the society on the account of such deceased member.

97. Transfer of shares or interest on death of member

(1) Where a person has been nominated as beneficiary by a member in accordance with the by-laws of a society and such nominee is admitted to membership in the society, the society shall within one year of the death of the member by whom the nomination was made, transfer the shares or interest of such deceased member to the limit specified in subsection (2) to the nominee.

(2) Where no such nominee is admitted to membership in the society or where the deceased member made no such nomination the society shall within one year of the death of such deceased member pay to the nominee or legal personal

representative of the deceased member as the case may be, such sum, not exceeding the said limit, representing the value or part thereof of the deceased member's share or interest in the society.

(3) This section shall not be construed as prohibiting a nominee who has been admitted to membership from electing to receive payment representing the value of the deceased member's shares or interest instead of accepting a transfer.

98. Restriction on transfer of shares

(1) Subject to this section, the transfer of the shares or interest of a member or deceased member in the capital of a society shall be subject to such conditions as may be prescribed by or under this Act.

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

99. Conditions for transfer of shares

(1) Subject to the by-laws, no transfer of shares in a society is valid for any purpose unless—

- (a) a written application for membership by the transferee is approved and the transfer is authorised by—
 - (i) a resolution of the directors, or
 - (ii) a person authorised by a resolution of the directors to approve applications and transfers of that kind; and
- (b) notification of any approval given under paragraph (a) is sent to the transferee and his or her name has been entered on the register of members.

(2) Despite subsection (1), a transfer of a share is valid for the purpose of evidencing the rights of the parties to the transfer between the transferor and the transferee.

100. Power of nomination

(1) Subject to subsection (2), a member of a society may, by instrument in writing signed by such member in the presence of 2 attesting witnesses and delivered at or sent to the registered office of the society during the lifetime of such member or made in any book kept at the registered office, nominate any person to or among whom there shall be transferred at his or her death such property in the society of which he or she is the owner at the time of his or her death, or as may have accrued thereon, whether in shares, loans or deposits, or so much thereof as is specified in such nomination if the nomination does not comprise the whole.

(2) A member of the society may nominate more than one person only if he or she holds more than one share.

(3) A nomination made under subsection (1) may be revoked or varied by a subsequent nomination signed, attested and delivered or sent or made as aforesaid, or by any similar document in the nature of a revocation or variation signed by the nominator in the presence of 2 attesting witnesses and delivered, sent or made as aforesaid; but any such nomination may not be revoked or varied by the will of the nominator or by any codicil to that will.

(4) All nominations and all revocations or variations of a nomination delivered or sent to a society shall be recorded in a book kept at the registered office of the society.

PART 6 BUSINESS OF SOCIETY

101. Marketing of produce through the society

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

- (a) that every such member who produces any such article shall market the whole or any specified amount, portion or description thereof to or through the society;
- (b) that any member who is proved or adjudged to have contravened the by-laws or to have acted in breach of the contract shall pay to the society liquidated damages in a sum ascertained or assessed in such a manner as may be prescribed in the by-laws.

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

102. Creation of charge in favour of society

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

(2) A charge shall so long as it continues in force confer on the society the following rights and impose on the society the following obligations—

- (a) the right upon the happening of any event specified in the charge as being an event authorising the chargee to seize the property subject to the charge and take possession of any such property so subject;
- (b) after an interval of 5 clear days or such less time as may be specified in the charge from the date of taking possession of any property subject to the charge, to sell such property either by auction or if the charge so provides by private treaty, either for a lump sum or payment by instalments;
- (c) to apply the proceeds of sale in or towards discharge of the debt secured by the charge and the costs of seizure and sale and to pay any surplus of such proceeds to the member whose property was sold.

(3) A charge shall, so long as it continues in force, impose on the member the obligation to pay to the society towards the discharge of his or her indebtedness the proceeds of sale of any property comprised in the charge or any money received under any policy of insurance or by way of compensation in respect of any such property, except in so far as the charge otherwise allows.

(4) For the avoidance of doubt, it is hereby declared that a charge under this section is not a bill of sale within the meaning of the Bills of Sale Act.

103. Execution and registration of charge

(1) A charge created under section 102 shall be duly executed if signed by the person in quintuplicate in the presence of—

- (a) the chairperson or president of the society; and
- (b) the secretary of the society.

(2) The secretary shall—

- (a) file one copy of the charge at the registered office of the society and deliver one copy each to the Registrar of the High Court, the Registrar of Co-operative Societies and the National League or National Council; and

(b) deliver one copy to the member.

(3) The Registrar of the High Court shall keep a book known as the "Co-operative Societies Charges Book" in which he or she shall register every charge delivered to him or her by the secretary of a society, and issue to the society a certified copy of the registration.

(4) The registration of a charge under subsection (3) shall constitute a first charge and security in favour of the society and shall be deemed to affect with notice any person dealing with the property comprised in the charge.

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

- (a) cause a document to that effect to be prepared in quintuplicate, and signed by the chairperson or president and secretary of the society indicating that the charge has been discharged; and
- (b) file one copy of such document, deliver one copy each to the Registrar of Co-operative Societies, the National League or National Council and the Registrar of the High Court who shall make an entry of satisfaction in the Co-operative Societies Charges Book; and
- (c) deliver one copy to the member.

(6) Any person may, on payment of the fee prescribed in the Regulations, inspect the Registered Societies Charges Book and take extracts from it.

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

104. Claims unaffected by charge

Section 102 shall not affect—

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

105. Prior claims in favour of society

(1) Subject to any claim in respect of debt due to the Crown or to a landlord in respect of rent or any money recoverable as rent, any debt or outstanding demand owing to a registered society by a member or past member shall, despite anything contained in section 103, be a first charge—

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

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

106. Enforcement of charge

(1) A society may enforce a charge by applying to the magistrate of the district in which the member resides or carries on business or where the property subject to the charge is situated for a warrant of distress by certifying under seal to the magistrate the amount due and particulars of the property so charged and the magistrate shall issue a warrant of distress and may offer the sale of the property by public auction or private treaty.

(2) Despite anything contained in any other statute, a magistrate shall have jurisdiction under subsection (1) even though the amount due exceeds the monetary limit of a magistrate.

107. Assignment of charge

(1) A society may borrow from any other society or from any bank approved by the Registrar on the security of any charge executed and registered in accordance with section 103 and may for this purpose assign any such charge to the other society or bank.

(2) An assignment of a charge under this section shall be registered in the same manner as a charge and section 103 shall apply, with the necessary modifications, to an assignment so registered.

(3) An assignment of a charge when registered shall operate as a first charge in favour of the assignee subject to section 104.

(4) Where any charge is assigned to a registered society established with the object of facilitating the operation of other societies, such society may borrow from any bank approved by the Registrar and for this purpose may re-assign any such charge to such bank and subsections (2) and (3) shall apply, with the necessary modifications, to such re-assignment.

108. Bond as additional security for loan

(1) A registered society may require a member or officer to give a bond with or without sureties as additional security for the repayment of any loan and any condition thereby imposed on the member or officer relating to the payment of capital and interest shall be strictly observed and performed and on breach of any such condition the bond shall be forfeited.

(2) Section 107 relating to the assignment of charges shall apply with the necessary modifications to the assignment of bonds.

109. Lien on shares

(1) A registered society has a lien on a share or any amount outstanding to the credit of a member or his or her legal representative for a debt due by that member to the society.

(2) A registered society may enforce a lien mentioned in subsection (1) in the manner set out in its by-laws.

(3) The board may, in default of payment by any member indebted to a registered society, apply the sum paid up on any shares held by that member in or towards the discharge of the debt so due and of any expenses in or about the same, and the defaulting member shall cease to have any further claim in respect of such shares.

110. Deductions applied to loans and shares

The by-laws of a society may provide that the society may—

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

- (b) apply the amount prescribed in paragraph (a) towards a loan or to the purchase of shares on such terms as the board determines.

111. Purchase of shares

(1) Subject to this section, a society may purchase shares or otherwise acquire any of its shares that—

- (a) are available for compulsory purchase under section 113; or
- (b) are offered for sale.

(2) Subject to subsection (4), a society shall pay in cash, within one year of the date of purchase, for any shares purchased under subsection (1).

(3) Subject to subsection (4), a society shall pay a purchase price for a share purchased under this section equal to the par value of the share together with any dividends declared but unpaid with respect to the share.

(4) Subject to subsection (5), where a society purchases or otherwise acquires shares issued by it, those shares are deemed to be cancelled.

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

112. Prohibition on purchase of shares

(1) Despite section 111, a society shall not purchase or otherwise acquire its shares where—

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

(2) Subject to subsection (3), where a purchase or other acquisition of shares under section 111 or 113, would in the opinion of the board, impair the financial stability of the society or would be contrary to the interest of the remaining members the board may suspend the purchasing or acquisition of shares.

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

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

113. Compulsory sale of shares

Where—

- (a) winding-up proceedings have commenced with respect to a body corporate that is a member of a society; or
- (b) a member of a society has, during a period of 2 years, failed to transact any business with the society,

the society may, by written notice to the member, require him or her to sell his shares to the society.

PART 7
PROPERTY AND FUNDS OF SOCIETY

114. Investment of funds

(1) A society may invest or deposit its funds—

- (a) in any registered society or bank approved by the Registrar;
- (b) in any securities issued or guaranteed by the Government;
- (c) in the shares or on the security of any society with limited liability; or
- (d) in any other manner permitted by the Registrar.

(2) Except with the approval of the general membership and of the Registrar, a society shall not invest its funds in real property.

115. Loan by society

(1) A society shall set guidelines in its bye-laws for the granting of loans, guarantees, advances and other forms of financial assistance to its members and may give loans, guarantees, advances and other forms of financial assistance to its members in accordance with guidelines set out in its bye-laws.

(2) Except for a loan to another society, no loan shall be made to a person who is not a member of that society.

(3) A loan shall not be made to a member of the board or to an officer of a society for a sum in excess of the value of his or her shares, deposits and accumulated dividend and interest thereon unless approved in the manner prescribed in regulations under this Act and bye-laws.

(4) An officer of a society shall not be present at or participate in a meeting when his or her application for a loan is being considered.

(5) A loan made in contravention of subsections (2), (3) or (4) is void and shall be repaid to the society immediately.

116. Prohibited loans

(1) Subject to this Act, a society or a member society shall not, directly or indirectly, give a loan, guarantee or other means of financial assistance—

- (a) to a member, director, officer or employee of the society or member society or an associate of any such person for any purpose; or
- (b) to any person for the purpose of or in connection with, the acquisition of membership of the society or the purchase of a share issued or to be issued by the society or member, where there are reasonable grounds to believe that the society is insolvent or would, after giving the financial assistance, be insolvent.

117. Receipt of loans and deposits

(1) Subject to the provisions of any by-law of a society made for the purpose, a society may receive deposits and loans from persons who are not members of the society for the purpose of meeting any obligation or discharging of any of its functions under this Act.

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

118. Receipt of deposits from minors

(1) A society may receive deposits from a minor and pay to such minor such deposit together with the interest accrued thereon.

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

(3) For the purposes of this section the mother of a minor born out of wedlock is the guardian of such minor, except where—

(a) there is subsisting a court order depriving her of the custody of such minor, in which case the guardian shall be the person named in the court order; or

(b) the minor customarily resides with some person other than the mother in which case that person shall be guardian.

(4) In subsection (3)(b) “customarily resides with” includes “is under the care of”.

(5) The receipt of a minor or his or her parent or guardian, as the case may be, for money received under this section shall be a good and sufficient discharge of the liability of the society in respect of that money.

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

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

119. Reserve Fund, liquidity and adequacy of capital

(1) Where a society realises a net surplus from its transactions that society shall establish and maintain a reserve fund which shall be kept in liquid form to the satisfaction of the Registrar.

(2) Where the annual audit of a society indicates a net surplus, at least 20% of that surplus, shall be credited to the statutory reserve fund; and such reserve fund may, subject to the approval of the Registrar, be used in the business of the society, including unforeseen losses, unexpected shortfalls in liquid cash, capital retention, repair and maintenance and the avoidance of external borrowing.

(3) Every society shall ensure—

(a) that not less than 15% of its members' shares and deposits are kept in a liquidity reserve; and

(b) that its statutory and other reserves are, at no stage, less than 10% of its total liabilities.

(4) The Registrar shall, on the application of a society or on his or her own account, grant a period of time as considered reasonable to enable management to make good any deficiency in the adequacy of its capital base.

(5) Subsections (1) and (3) apply to credit unions only.

120. Development Fund

(1) Every society shall establish and maintain a Development Fund.

(2) Every registered society that realises a surplus from its operations as ascertained by the annual audit may make such annual contribution as may be

determined by the National League or National Council not exceeding 10% of that surplus of such fund to be used for the development of registered societies.

(3) Subject to subsection (4), the Development Fund shall be administered by the National League or National Council in such manner as may be prescribed.

(4) Where a National League or National Council has not been established or is not functioning as such, the Development Fund shall be administered by person or body of persons determined by the Registrar.

121. Pension Fund

(1) A society may establish a contributory pension fund for its servants and employees and may contribute to that fund.

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

122. Charitable contributions

After making the prescribed payments to its reserve and Development Fund a society may, with the approval of the Registrar, contribute to any non-profit, charitable, benevolent or cultural purpose.

123. Dividend or bonus

(1) Subject to this section and sections 119 and 120, any surplus may be distributed by way of dividend or bonus amongst its members in proportion to their patronage with the society at such rate as may be prescribed.

(2) A registered society shall not—

- (a) pay a dividend or bonus or distribute any part of its accumulated funds before the financial statement has been certified by an auditor approved or appointed by the Registrar; or
- (b) pay a dividend or make any payment on account out of profits until the reserve fund has reached a proportion of not less than 10% of the total liabilities of the society.

(3) A bonus based on wages or on the value of the products of a member or a bonus or rebate patronage calculated in proportion to the amount of the business done by each member with the registered society may be distributed periodically to the members from surplus funds after the deduction of all expenditure and after making provision for bad and doubtful debts and making allocation for the statutory reserve fund.

PART 8 FINANCIAL DISCLOSURE AND AUDIT

124. Annual financial statements

(1) The directors of a society must place before the members at every annual meeting of members of the society—

- (a) comparative financial statements, as prescribed, relating separately to—
 - (i) the period that began on the date the society came into existence and ended not more than 12 months after that date, or, if the society has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than 12 months after the beginning of that period, and

- (ii) the immediately preceding financial year;
- (b) the report of the auditor; and
- (c) any further information respecting the financial position of the society and the results of its operations required by the by-laws.

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

125. Approval of financial statements

(1) The directors of a society must approve the financial statements referred to in section 124, and the approval must be evidenced by the signature of 2 or more directors.

(2) A society shall not issue, publish or circulate copies of the financial statements referred to in section 124 unless the financial statements are—

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by a report of the auditor, if any, of the society.

126. Furnishing financial statements

(1) Not less than 10 days before each annual meeting of members, a society must make available to each member a copy of the financial statements and report of the auditor referred to in section 124.

(2) Where a society applies to the Registrar and he or she is satisfied that there are reasonable grounds, he or she may excuse the society from complying with subsection (1).

127. Auditor's qualifications

(1) Subject to section 128, only individuals who qualify under subsection (2) are qualified for appointment as auditors of a society.

(2) An individual qualifies for appointment as auditor, if he or she is qualified to be appointed an auditor under the Companies Act.

(3) Despite subsections (1) and (2), the Registrar may, in any special case, audit the accounts, or appoint any person whether or not qualified in accordance with subsection (2) to audit the accounts, of any registered society.

128. Disqualifying auditor

(1) Subject to subsection (7), an individual is not qualified to be an auditor of a society if he or she is not independent of the society and its member societies, and of the directors and officers of the society and its member societies.

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

(3) An individual is presumed not to be independent of a society if he or she or his or her business partner—

- (a) is a member, a director, an officer or an employee of the society or any of its member societies or a business partner or employee of any director, officer, member or employee of any such society, or its member societies;
- (b) is a member of a credit committee or any other committee of the society or any of its member societies; or
- (c) transacts a substantial amount of business with the society or a member society thereof.

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

(5) An auditor who becomes disqualified under this section must, subject to subsection (7), resign after he or she becomes aware of his or her disqualification.

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

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

129. Appointment of Auditor

(1) Subject to subsection (4), the members of a society shall—

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

(2) Despite subsection (1)(b), if an auditor is not appointed at an annual meeting, the incumbent auditor continues in office until his or her successor is appointed at a subsequent meeting.

(3) The remuneration of an auditor shall be fixed by the directors.

(4) An auditor shall be deemed not to have assumed office unless he or she has, in writing to the society, confirmed his or her willingness to serve as auditor.

130. Cessation of office

(1) An auditor of a society ceases to hold office when—

- (a) he or she dies or resigns; or
- (b) he or she is removed under section 131.

(2) The resignation of an auditor becomes effective at the time a written resignation is sent to the society, or at the time specified in the resignation, whichever is the later date.

131. Removal of Auditor

The members of a society may, by ordinary resolution at a special meeting remove an auditor other than an auditor appointed by the Registrar under section 133.

132. Filling vacancy of auditor

(1) Subject to subsection (4), the directors must fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office must, within 21 days after the vacancy in the office of auditor occurs, call a special meeting of members to fill the vacancy.

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

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

(5) An auditor appointed to fill a vacancy holds office for the unexpired term of his or her predecessor.

133. Registrar appointed auditor

If a society does not have an auditor, the Registrar may, upon his or her own motion, and shall, upon the application of a member, appoint and fix the remuneration of an auditor, and the auditor holds office until an auditor is appointed in accordance with section 129.

134. Auditor's right to notice

The auditor of a society is entitled to receive notice of every meeting of the members of the society, and at the expense of the society, to attend and be heard at the meeting on matters relating to his or her duties as auditor.

135. Required notice

If a member of a society who is entitled to vote at a meeting of members, or a director of a society gives written notice to the auditor or a former auditor of the society, not less than 10 days before a meeting of members of the society, to attend the meeting, the auditor or former auditor, as the case may be, shall attend the meeting at the expense of the society and answer questions relating to his or her duties as an auditor or former auditor.

136. Auditor's right to comment

(1) An auditor who—

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

may submit to the society a written statement giving the reason for his or her resignation or the reasons why he or she opposes any proposed action.

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

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

(4) Despite subsection (3), an individual otherwise qualified may accept appointment or consent to be appointed as auditor of a society if, within 15 days of making the request referred to in that subsection, he or she does not receive a reply to it.

137. Examination by auditor

(1) An auditor of a society shall make the examination that is in his or her opinion necessary to enable him or her to report in the prescribed manner on the financial statements required by this Act to be placed before the members, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in section 124(1)(a)(ii).

(2) The auditor of a society shall make a report to the members, on the accounts examined by him or her, and on every balance sheet and every revenue and appropriation account laid before the society at the Annual General Meeting during the tenure of office of the auditor.

(3) The auditor's report shall state whether the balance sheet and revenue and appropriation accounts are properly drawn up in accordance with the requirements of this Act and the Regulations made under this Act, and whether, in the opinion of the auditor they give a true and fair view—

- (a) in the case of the balance sheet, of the state of the society's affairs at the end of its financial year; and
- (b) in the case of the revenue and appropriation accounts, of the income and expenditure of the society for its financial year.

(4) It shall be the duty of the auditor of a Society, in preparing his or her report under this section to carry out such investigations as will enable him or her to form an opinion as to—

- (a) whether the society has kept proper books of accounts and proper records of the matters referred to in section 124(1);
- (b) whether the society has maintained a satisfactory system of control over its transactions and records;
- (c) whether the balance sheet and revenue and appropriation accounts are in agreement with the books of accounts and records of the society;
- (d) whether the society has kept proper books of accounts and records and maintained a satisfactory system of control over its transactions and records; and
- (e) whether the balance sheet and revenue and appropriation accounts are in agreement with the books and records of the society.

(5) The auditor's report shall be read before the society at the annual general meeting and shall be open for inspection to any member.

138. Auditor's right to inspect

(1) Upon the demand of an auditor of a society the present or former directors, officers, employees or agents of the society shall furnish to the auditor—

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

as are in the opinion of the auditor, necessary to enable him or her to make the examination and report required under section 137 and that the directors, officers, employees or agents are reasonably able to furnish.

(2) Upon the demand of the auditor of a society, the directors of the society must—

- (a) obtain from the present or former directors, officers, employees or agents of any member of the society that is a registered society, the information and explanations that the directors, officers, employees and agents are reasonably able to furnish, and that are in the opinion of the auditor,

necessary to enable him or her to make the examination and report required under section 137; and

(b) furnish the information and explanations so obtained to the auditor.

(3) Where a former director, officer, employee or agent of a member fails to comply with subsection (2), he or she commits an offence and is liable on summary conviction to a fine of \$1,000 or to imprisonment for 6 months or both and to a further fine of \$50 for every day he or she fails to comply with that subsection after a conviction is first obtained.

139. Error or mis-statement

(1) A director or an officer of a society shall notify the society's auditor of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or former auditor has reported upon.

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

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

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

140. Privilege of auditor

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

141. Annual and special returns

(1) Within 30 days, or such longer period as the Registrar allows, of the date of its annual meeting, a society shall—

- (a) file with the Registrar an annual return for the previous year, on the form provided by the Registrar; and
- (b) furnish the Registrar with a copy of the financial statement placed before its members at its last annual meeting.

(2) Within 30 days, or such longer period as the Registrar allows, after the date of its reporting period at the end of each month every society shall file a monthly return with the Registrar.

(3) The Registrar may, by notice in writing, require a society, director or officer of a society to make a special return on any subject connected with the business and affairs of the society and, when he or she requests a special return, he or she shall specify in the notice a time within which the special return is to be made.

PART 9 RECONSTRUCTION OF SOCIETIES

142. Methods of reconstruction

(1) The reconstruction of a registered society may be effected by any of the following methods—

- (a) the amalgamation of one society with another society to form a single society;
- (b) the transfer of the assets and liabilities of one society to another society; or
- (c) the division of a society into 2 or more societies.

(2) Sections 145 to 148 shall have effect with respect to the procedure that must be followed in relation to subsections (1)(a) to (1)(c).

143. Conversion

(1) A company registered under the Companies Act or a registered industrial, provident or friendly society may, by special resolution, determine to convert itself into a registered society.

(2) Any such resolution for conversion into a registered society shall appoint 10 persons who are members of the company, industrial, provident or friendly society, as the case may be, who together with the secretary, shall sign the rules and who may, by resolution, be given such powers to act on behalf of the company, industrial, provident or friendly society, as may be specified in such resolution.

(3) A copy of the special resolution referred to in subsection (1) with 3 copies of the by-laws shall be sent to the Registrar who may, upon receipt thereof, register the society and issue a certificate in accordance with section 13.

144. Effect of certificate of registration

(1) On the date shown in the certificate of registration issued under section 243—

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

(2) Every right or claim and the liability for every penalty mentioned in subsection (1) have priority as against the property of the registered society over all other rights or claims against, or liabilities of the registered society.

145. Amalgamation of societies

(1) Any 2 or more societies may, by a resolution passed by not less than $\frac{3}{4}$ of all the members of each society present and voting at a special general meeting called for the purpose, amalgamate as one society.

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

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

146. Transfer of assets of societies

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

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

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

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

(5) Where the vesting of the assets of a society involves real property, a copy of the resolution referred to in subsection (1), certified as such by the Registrar, shall be recorded at the Registration Office, the Land Registry or such other government department in which dealings in real property are recorded or registered, as the case may be.

147. Claims of objecting creditors

Despite sections 145 and 146 no amalgamation or transfer shall be effected unless the creditors of the societies concerned are given 3 months written notice of the proposal and have signified that they have no objections.

148. Division of society

(1) Any society may, by resolution in this section referred to as a "preliminary resolution" passed by 3/4 of the members present and voting at a special general meeting called for the purpose, resolve to divide itself into 2 or more societies.

(2) A preliminary resolution—

- (a) shall contain proposals for the division of the assets and liabilities of the society among the new societies into which it is proposed to divide the society; and
- (b) may specify the area of operation of, and the members who will constitute, each of the new societies.

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

(4) At least 10 days notice of the preliminary resolution shall be given to any person whose interests will be affected by the division of the society, and the notice shall be published at least once in the Gazette and in a newspaper circulating in Saint Lucia.

(5) Any member of a society may, despite any by-law to the contrary, by notice given to the society within a period of 3 months from his or her receipt of the preliminary resolution, state his or her intention not to become a member of any of the new societies.

(6) Any creditor of the society may, despite any agreement to the contrary, by notice given to the society within a period of 3 months from his or her receipt of the preliminary resolution, state his or her intention to demand the payment of moneys due him or her.

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

(8) After the expiration of 3 months from the receipt of the preliminary resolution by all the members and creditors of the society and of the notice to other persons given under subsection (4), another special general meeting of the society, of which at least 15 days notice shall be given to its members, shall be convened for the consideration of the preliminary resolution.

(9) If at the special general meeting referred to in subsection (8) the preliminary resolution is confirmed by a special resolution either without changes or with such changes as in the opinion of the Registrar are not material, the Registrar may, subject to subsection (11) and section 13, register the new societies; and upon registration, the original society shall be deemed to be dissolved and its registration cancelled.

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

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

- (a) repayment of the share capital of all the members who have given notice under subsection (5);
- (b) satisfaction of the claims of all the creditors who have given notice under subsection (6);
- (c) satisfaction of the claims of such of the other persons who have given notice under subsection (7),

but a member or creditor or other person shall not be entitled to such repayment or satisfaction until the preliminary resolution is confirmed in accordance with subsection (9).

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

- (a) the share capital of the members referred to in subsection (11)(a) is not repaid;
- (b) the claims of the creditors referred to in subsection (11)(b) are not satisfied; or
- (c) the claims of the other persons mentioned in subsection (11)(c) are not satisfied or secured,

the Registrar may refuse to register the new societies.

149. Effect of registration of new societies

The registration of new societies established under section 148 is sufficient to vest the assets and liabilities of the original society in the manner specified in the preliminary resolution as confirmed in accordance with subsections (8) and (9) of that section.

PART 10 RECEIVERS AND RECEIVER-MANAGERS

150. Receiver appointed by Registrar

Where, in the opinion of the Registrar, based on the results of an examination undertaken under section 180, it is necessary to appoint a receiver-manager to protect

the equity of the members, the Registrar may, subject to the approval of the Minister, appoint a receiver-manager.

151. Functions of receiver

(1) Subject to the rights of secured creditors, a receiver of any property of a society may—

- (a) receive the income from the property and pay the liabilities connected with the property; and
- (b) realise the security interest of those on whose behalf he or she is appointed.

(2) Despite subsection (1) and subject to any order that the Court may make under section 155, a receiver who is not appointed manager of a society shall not carry on the business of the society.

152. Functions of receiver-manager

Despite section 150, where a receiver of a society is also appointed manager of the society, he or she may carry on any business of the society to protect the security interest of those on whose behalf he or she is appointed.

153. Cessation of board's manager

Where a receiver or receiver-manager is appointed by a Court or the Registrar or under an instrument, the directors of the society shall not exercise the directors' powers that the receiver or receiver-manager is authorised to exercise until the receiver or receiver-manager is discharged.

154. Receiver's duty

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

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

(3) A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction that the Court may make under section 155.

(4) A receiver or receiver-manager shall—

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

155. Directions by court

Upon an application by a receiver or a receiver-manager of a society, whether appointed by the court or under an instrument upon an application by an interested person, including the Registrar, the Court may make any order it thinks fit, on any matter including an order—

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

- (d) requiring the receiver or receiver-manager, or a person by or on behalf of whom he or she is appointed—
 - (i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the society, and
 - (ii) to relieve a receiver or a receiver-manager, or a person by or on behalf of whom a receiver or receiver-manager is appointed from any default on any terms that the court considers appropriate;
- (e) confirming any act of the receiver or receiver-manager; and
- (f) giving directions on any other matter relating to the duties of the receiver or receiver manager.

156. Directions by Registrar

(1) Where a receiver-manager is appointed by the Registrar, the receiver-manager or any interested person may apply to the Registrar for directions on any matter relating to the duties of the receiver or receiver-manager.

(2) Where the Registrar receives an application under subsection (1), he or she may make any order he or she considers appropriate, including any order similar to an order described in section 155(c) to 155(f).

157. Required action of receiver

A receiver or receiver-manager shall—

- (a) in the case of a receiver or receiver-manager appointed by the Court or under an instrument, immediately notify the Registrar of his or her appointment or discharge;
- (b) take into his or her custody and control the property of the society in accordance with the Court order, order of the Registrar or instrument under which he or she is appointed;
- (c) open and maintain a bank account in his or her name as receiver or receiver-manager of the society for the moneys of the society coming under his or her control;
- (d) keep detailed accounts of all transactions carried out by him or her as receiver or receiver-manager;
- (e) keep accounts of his or her administration that he or she shall cause to be available during usual business hours for inspection by the directors of the society, the Registrar or any person authorised by the Registrar;
- (f) prepare at least once in every 6 month period after the date of his or her appointment financial statements of his or her administration, as far as is practicable in the form required in section 124;
- (g) on completion of his or her duties, render a final account of his or her administration in the form he or she has adopted for preparation of interim accounts under paragraph (f); and
- (h) file with the Registrar a copy of any financial statement mentioned in paragraph (f) and any final account mentioned in paragraph (g) within 15 days of the preparation of the financial statement or rendering of the final account, as the case may be.

PART 11 DISSOLUTION

158. Dissolution by members

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

(2) The board shall cause a notice of a special meeting of members to be sent in the manner prescribed in section 43 to each member for the purpose of authorising dissolution.

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

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

(5) Where the Registrar—

- (a) receives notice, in a form satisfactory to him or her, of an authorisation to dissolve a society; and
- (b) is satisfied that it is in the best interest of the society and its members, he or she shall approve the dissolution.

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

- (a) the assets and liabilities of the society;
- (b) the claims of any creditors;
- (c) the number of members; and
- (d) the nature and extent of the members' interest in the society.

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

- (a) named in the special resolution; or
- (b) where not named in the special resolution, appointed by the Registrar.

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

- (a) deposit the money in a special trust account—
 - (i) in a registered society, or
 - (ii) a bank registered under the Banking Act;
- (b) invest the money in any manner authorised by law.

(9) Where a trust is created under subsection (7), the income and principal of the trust is required to be expended within a period of 20 years from the date that the trust was established for any co-operative purpose the Registrar considers fit.

(10) In this section—

- (a) "**interest**" means the interest of a member in a society and includes member loans and obligations of any kind that—
 - (i) arise by virtue of the by-laws of the society, and
 - (ii) are owed by the society to the members;

- (b) “**unallocated surplus**” includes any net proceeds from the sale of assets on dissolution of the society after the liabilities of the society and the claims of creditors and members have been satisfied.

159. Notice of dissolution by members

(1) When the Registrar approves a special resolution passed under section 158 he or she shall, at the expense of the society, cause a notice of the special resolution to be published once a week for 2 weeks—

- (a) in the Gazette; and
- (b) in a newspaper circulating in Saint Lucia.

(2) Despite subsection (1), where the Registrar receives an affidavit from the officers of a society stating that the society has no assets and no liabilities and he or she is satisfied that it is appropriate, he or she may—

- (a) exempt the society from subsection (1); and
- (b) cause, at the expense of the Registrar, a notice of the special resolution passed under section 158(1) to be published in the Gazette.

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

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

160. Dissolution by Registrar

(1) Where the Registrar has reasonable cause to believe that a society—

- (a) has not commenced business within 2 years after the date shown on its certificate of registration; or
- (b) has not carried on business for 2 consecutive years,
he or she shall send to the secretary of the society a letter inquiring whether the society is carrying on business, is in operation or is submitting an annual return.

(2) Where the Registrar does not, within one month of the date he or she sent a letter under subsection (1), receive an answer to the letter, he or she shall, within 14 days after the expiry of the month, send to the secretary of the society a letter referring to the letter sent under subsection (1) and stating that—

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

(3) Where the Registrar—

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

he or she may publish in the Gazette and send to the society a notice that, at the expiry of one month from the date of that notice, the society will, unless cause is shown to the contrary, be struck off the register and the society will be dissolved.

(4) At the expiration of the period mentioned in a notice sent under subsection (3), the Registrar may, unless cause to the contrary is previously shown by the society—

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

161. Dissolution for failure to account for business

(1) Where a society fails to furnish a copy of the annual financial statements to its members at an annual or special meeting called for that purpose or within a period of 12 months after the close of its financial year, the Registrar—

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

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

- (a) to review the financial position of the society and the members' interests in the society; and
- (b) to ascertain whether the members desire to continue the business of the society and to comply with sections 124 and 126.

(3) Where—

- (a) a quorum of members is not present at a special meeting called under subsection (2); or
- (b) the members fail to pass a resolution to the effect that the society is to carry on business and to comply with sections 124 and 126,

the Registrar may notify the directors that, unless sections 124 and 126 are complied with within one month from the date of the notice, the society will be struck off the register and dissolved.

(4) Despite subsection (3), the Registrar may extend the period for compliance with sections 124 and 126.

(5) Where a society does not comply with sections 124 and 126 within the period mentioned in subsection (3) or set by the Registrar under subsection (4) the Registrar may—

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

162. Dissolution by Court

(1) The Registrar or an interested person may, after giving the society 3 months notice of the proposed application, apply to the Court for an order dissolving a society, if the society—

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

(2) Where an interested person applies under this section, he or she shall give the Registrar notice of his or her application and the Registrar is entitled to appear and be heard in person or by an attorney-at-law.

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

(4) Where the Registrar receives an order made under subsection (3), he or she shall—

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

163. Revival of dissolved society

(1) Where a society has been dissolved under this Part, any interested person may apply to the Registrar to have the society revived by sending him or her an application for revival in the prescribed form.

(2) Where the Registrar receives an application for revival under subsection (1) and he or she is satisfied that the society is in compliance with this Act, he or she may—

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

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

(4) Where a society is revived under this section, it—

- (a) has all the rights and privileges; and
- (b) is liable for the obligations,

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

164. Appointment of liquidator

(1) Where—

- (a) a society is to be dissolved under this Part; or
 - (b) no liquidator is appointed by the members or the Court,
- the Registrar may appoint a liquidator to wind up the affairs of the society.

(2) Despite subsection (1) where the Registrar is satisfied that the society has no assets and liabilities, he or she may issue a certificate of dissolution in the prescribed form.

165. Commencement of liquidation

The liquidation of a society commences where—

- (a) a special resolution for dissolution of the society is approved by the Registrar under section 158;
- (b) the Registrar appoints a liquidator under section 160 or 161;
- (c) the Court makes an order to dissolve under section 162.

166. Cessation of business

(1) From the date of the commencement of its liquidation—

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

167. General provisions respecting liquidators

(1) Where 2 or more liquidators are appointed, all the provisions in this section with respect to a liquidator apply to all of the liquidators.

(2) On the appointment of a liquidator under this Part, all the powers of the directors cease and such powers of the directors as are required for an orderly liquidation shall vest in the liquidator.

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

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

(5) Where—

- (a) the members appoint a liquidator and do not issue directions under subsection (4); or
- (b) a liquidator is not appointed by the members,
the liquidator is subject to the directions, orders and instructions of the Registrar with respect to the mode and terms and conditions on which he or she may dispose of the whole or any part of the property of the society.

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

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

168. Duties of liquidators

On his or her appointment, a liquidator shall—

- (a) immediately give notice of his or her appointment—

- (i) in the case of a liquidator not appointed by the Registrar, to the Registrar, and
 - (ii) to each claimant and creditor known to the liquidator;
- (b) immediately publish notice of his or her appointment in the Gazette and once a week for 2 consecutive weeks in a newspaper printed and published in Saint Lucia;
- (c) set out in the notice mentioned in paragraphs (a) and (b) a provision requiring any person—
 - (i) indebted to the society, to render an account and pay to the liquidator at the time and place specified,
 - (ii) possessing property of the society, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the society, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice;
- (d) take into his or her custody and control the property of the society;
- (e) open and maintain a trust account for the moneys of the society;
- (f) maintain separate lists of the members, creditors and other persons having claims against the society;
- (g) where at any time he or she determines that the society is unable to pay or adequately provide for the discharge of its obligations, apply to the Registrar for directions; and
- (h) deliver to the Registrar and the society, at least once in every 12 month period after his or her appointment or as often as the Registrar may require, financial statements of the society in the form required in section 124 or in any form that the liquidator considers proper or that the Registrar may require.

169. Power of liquidator

(1) The liquidator may—

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

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

(3) Where the examination mentioned in subsection (2) discloses that a person has concealed, withheld or misappropriated property of the society, the court may order that person to restore the property or pay compensation to the liquidator on behalf of the society.

(4) Subject to the approval of the Registrar, a liquidator shall not purchase, directly or indirectly, any part of the stock-in-trade, debts or assets of the society.

170. Limitation on liability of liquidator

A liquidator is not liable where he or she relies in good faith on—

- (a) financial statements of the society represented to him or her—
 - (i) by an officer of the society, or
 - (ii) by the auditor of the society in a written report that states that the financial statements reflect fairly the financial condition of the society; or
- (b) an opinion, a report or a statement of an attorney-at-law, an accountant, an engineer, an appraiser or other professional advisor retained by the liquidator.

171. Cost of liquidation

(1) A liquidator shall pay the costs of liquidation out of the property of the society and shall pay or make adequate provision for all claims against the society.

(2) After the date specified by the liquidator for distribution under section 168(c)(iii), he or she may distribute all or any part of the assets of the society among the parties entitled to the assets having regard to the claims of which the liquidator has notice.

(3) The liquidator is not liable for any part of the assets of the society distributed under subsection (2) to any person notice of whose claims the liquidator did not have at the time of distribution.

(4) When distributing the assets of a society under this section, the liquidator shall pay, in priority to the claims of the creditors of the society, the wages or salaries of all persons, other than directors, employed by the society at the time of the commencement of the obligation or within one month before, not more than 3 months' wages or salary, and those persons are entitled to rank as creditors of the society for any residue of the claims.

172. Closure of liquidation

(1) In the liquidation of a registered society the funds, including the Reserve Fund, shall be applied as follows—

- (a) firstly to the costs of liquidation;
- (b) secondly to the discharge of the liabilities of the society;
- (c) thirdly to the payment of share capital;
- (d) fourthly, if the by-laws of the society permit, to the payment of a dividend at a rate not exceeding 10% per annum for any period during which no distribution of profits has been made.

(2) Any surplus remaining after the application of the funds to the purposes specified in subsection (1) may, at the discretion of the Registrar, be used for any cooperative purpose he or she considers fit.

(3) Where the liquidation is closed under subsection (1), the Registrar shall—

- (a) issue directions with respect to the custody or disposal of the documents and records of the society; and
- (b) discharge the liquidator.

(4) Where the Registrar discharges a liquidator under subsection (3), he or she shall issue a certificate of dissolution in the prescribed manner.

(5) The society ceases to exist on the date shown in the certificate of dissolution.

173. Custody of records

A person who has been granted custody of the documents and records of a dissolved society remains liable to produce those documents and records for 6 years following the date of its dissolution or until the expiry of any other shorter period that the Registrar may set.

174. Remuneration of liquidator

(1) Where there is no agreement or provision fixing the remuneration of a liquidator, he or she is entitled to a commission based on the net proceeds of the estate of the society realized after deducting his or her expenses and disbursements.

(2) The amount of the commission mentioned in subsection (1) is equal to—

- (a) five per cent on the first \$1,000 realised;
- (b) two point five per cent on the next \$4,000 realised; and
- (c) one point two five per cent on any sum greater than \$5,000 realised.

(3) Where a liquidator applies to the Registrar, he or she may increase the amount of commissions set out in subsection (2).

(4) A liquidator is not entitled to any fee or charge for his or her services in addition to the commission allowed under this section.

175. Continuation of actions

(1) Despite the dissolution of a society under this Act—

- (a) a civil, criminal or administrative action or proceeding commenced by or against the society before its dissolution may be continued as if the society had not been dissolved; and
- (b) a civil, criminal or administrative action or proceeding may be brought against the society within 2 years after its dissolution as if the society had not been dissolved; and
- (c) any property that would have been available to satisfy any judgement or order if the society had not been dissolved remains available for that purpose.

(2) Service of a document on a society after its dissolution may be effected by serving the document on a person shown on the records of the Registrar as one of the last directors of the society.

(3) Despite the dissolution of a society, a person to whom any of its property has been distributed is liable to any person claiming under subsection (1) to the extent of the amount received by that person on the distribution with respect to any share of the society that person held, and an action to enforce such liability may be brought within 2 years after the date of dissolution of the society.

176. Unknown claimants or members

(1) On the dissolution of a society, the claimants shall convert into money the portion of the property distributable to a creditor or member who cannot be found

after a reasonable investigation and shall deposit the money in a registered society or with trustees appointed by the Registrar.

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of such creditor or member.

(3) Where a creditor establishes within 3 years after the dissolution of a society that he or she is entitled to any money paid, under subsection (1), to a registered society or to trustees appointed by the Registrar, the society or the Registrar, as the case may be, shall apply the amount of the claim out of the moneys deposited.

(4) Where moneys deposited under this section are not distributed within 3 years after the dissolution of a society then, subject to the approval of the Registrar, the society or the trustees appointed by the Registrar shall distribute those moneys in accordance with section 169 or the by-laws.

177. Power of Registrar to surcharge

(1) Where, in the course of the dissolution of a society it appears that any person who has taken part in the organization or management of such society or any past or present officer of the society has misapplied or retained or become liable or accountable for any money or property of such society or has been guilty of misfeasance or breach of trust in relation to such society, the Registrar may, on the application of the liquidator or of any creditor or contributory, carry out an examination into the conduct of such person and make an order requiring him or her to repay or restore the money or property or any part thereof with interest at such rate as the Registrar thinks just or to contribute such sum to the assets of such society by way of compensation in regard to the misapplication, retainer, dishonesty or breach of trust as the Registrar thinks just.

(2) This section shall apply although the act is one for which the offender may be criminally responsible.

178. Appeal against surcharge

Any person aggrieved by any order of the Registrar made under section 177 may appeal to the Cooperative Societies Appeal Tribunal within 21 days from the date of such order and the decision of the Tribunal shall be final on any question of fact.

179. Application of Part 11

(1) This part does not apply to a society that is bankrupt within the meaning of the Companies Act.

(2) Where a society is at any time found in proceedings under the Companies Act to be bankrupt within the meaning of that Act, any proceedings taken under this Part to dissolve or to liquidate and dissolve the society are stayed.

PART 12 INVESTIGATIONS

180. Examination

(1) The Registrar may—

- (a) on his or her own motion; or
- (b) on the application of the lesser of 25 members and 10% of the members,
appoint a person as examiner who shall make an examination of the books of the society and examine the affairs of the society and shall make available his or her report to the Registrar.

(2) Subject to subsection (3), the Registrar may direct that the expenses incidental to an examination undertaken under this section are to be defrayed—

- (a) by the members applying for the examination;
- (b) by the society or its officers; or
- (c) by any combination of the members, the society or its officers.

(3) Where an examination undertaken under this section reveals substantial irregularities in the business of the society, the Registrar shall not direct any members on whose motion the examination was commenced to defray the expenses.

(4) Where the Registrar appoints an examiner under subsection (1), the society and its officers, members, agents or employees shall furnish the examiner with any books, accounts, securities or other documents the examiner requires to perform the examination.

181. Investigations

(1) A member, the Registrar or any interested person may apply *ex parte*, or on any notice that the Court may require, to the Court for an order directing an investigation to be made of the society and any of its member societies or corporations.

(2) On an application under subsection (1), the Court may order an investigation of a society or of any of its affiliates where it appears to the Court that—

- (a) the society is not fulfilling the purpose stated in its by-laws;
- (b) the society is not carrying on business in accordance with this Act or the regulations or the by-laws;
- (c) the society is not organised or being operated on co-operative principles;
- (d) the business of the society or any of its member societies is or has been carried out with intent to defraud any person;
- (e) the business or affairs of the society or any of its member societies are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or has unfairly disregarded the interest of a member or security holder;
- (f) the society or any of its member societies was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (g) persons concerned with the formation, business or affairs of the society or any of its member societies have acted fraudulently or dishonestly, in connection with the society.

(3) An applicant for an order under this section is not required to give security for costs.

(4) An *ex parte* application under this section shall be heard *in camera*.

(5) A person shall not publish anything relating to *ex parte* proceedings conducted under to this section other than with the authorisation of the Court or the written consent of the society being investigated.

182. Court order

In connection with an investigation under section 181, the Court may make any order it considers appropriate, including an order—

- (a) to investigate;
- (b) appointing an inspector, who may be the Registrar, fixing the remuneration of an inspector and replacing an inspector;

- (c) determining the notice to be given to any interested person or dispensing with notice to that person;
- (d) authorising an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine anything and make copies of any document or record found on the premises;
- (e) requiring any person to produce documents or records to the inspector;
- (f) authorising an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
- (g) requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
- (h) giving directives to an inspector or any interested person on any matter arising in the investigation;
- (i) requiring an inspector to make an interim or final report to the Court and to the Registrar;
- (j) determine whether a report of an inspector made under paragraph (i) should be published and, where published, ordering the Registrar to publish the report in whole or in part or to send copies to any person the Court designates;
- (k) requiring an inspector to discontinue an investigation;
- (l) requiring the society or a person who applied under section 162 for an order to pay the costs of the investigation.

183. Powers of inspector

(1) An inspector appointed under section 182(b) has the powers set out in the order appointing him or her.

(2) In addition to the powers set out in the order appointing him or her, an inspector may furnish to, or exchange information and otherwise co-operate with, any public official in Saint Lucia or elsewhere who—

- (a) is authorised to exercise investigatory powers; and
 - (b) is investigating, with respect to the society, an allegation of improper conduct,
- that is the same as or similar to the conduct described in section 181(2).

184. Hearing in camera

(1) Any interested person may apply to the Court for an order that a hearing conducted by an inspector appointed under section 182 be heard *in camera* and for directions on any matter arising in the investigation.

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector appointed under section 182 has a right to be represented by an attorney-at-law.

185. Incriminating statements

(1) A person is not excused from attending and giving evidence and producing documents and records to an inspector appointed under section 182(b) by reason only that the evidence tends to incriminate him or her or subject him or her to any proceedings or penalty.

(2) Evidence described in subsection (1) shall not be used or received against any person in any proceeding instituted against him or her, other than a prosecution for perjury in giving evidence.

186. Absolute privilege respecting statements

(1) Any oral or written statement or report made by an inspector or any other person in an investigation undertaken under this Part has absolute privilege.

(2) This Part does not affect the privilege that exists in respect of an attorney-at-law and his or her client.

PART 13 DISPUTES

187. Settlement of disputes

(1) Where any dispute that relates to the business of a society arises—

- (a) among members, former members and persons claiming through members or deceased members;
- (b) between a member, former member or person claiming through a member or a deceased member, and the society, its board, or any officer of the society;
- (c) between a member and the society arising out of or under any by-law relating to the disposal of the produce of agricultural or animal husbandry, or under any contract made under this Act;
- (d) between the society and any other society,

any party to the dispute may refer it to the Registrar for decision.

(2) The Registrar may, before proceeding to hear or determine a dispute, make or cause to be made a preliminary investigation—

- (a) to ascertain the cause;
- (b) to define the issues;
- (c) to bring about a voluntary settlement between the parties to the dispute.

(3) For the purpose of hearing any dispute the Registrar or an arbitrator appointed by the Registrar, as the case may be—

- (a) may administer oaths; and
- (b) may require—
 - (i) the attendance of all parties concerned and witnesses, and
 - (ii) the production of all books, documents and things relating to the dispute.

(4) The Registrar or arbitrator, as the case may be, may order the expenses of determining any dispute, including fees to an attorney-at-law to be paid by the society or the parties to the dispute.

(5) A party aggrieved by a decision of the Registrar or an arbitrator may appeal to the Co-operative Societies Appeals Tribunal within such time and in such manner as may be prescribed.

(6) Despite anything in this section, a registered society may exercise any rights arising by law under any charge, mortgage, bill of sale or other security duly executed in accordance with this Act or any other law without recourse to arbitration.

(7) For the purposes of subsection (1), a claim by a society for any debt or demand due to it from a member, former member or the personal representative of a deceased member is a dispute that relates to the business of a society within the meaning of subsection (1).

188. Cooperative Societies Appeals Tribunal

(1) There shall be a Cooperative Societies Appeals Tribunal which shall consist of 3 persons, one of whom shall be an attorney-at-law of at least 5 years standing.

(2) The members of the Tribunal shall be appointed by the Minister after consultation with the National League or National Council, for a period of not more than 3 years, and are eligible for reappointment.

(3) The Tribunal shall have jurisdiction to hear appeals against a decision of the Registrar or an arbitrator.

(4) The members of the Tribunal shall receive such remuneration as the Minister determines.

189. Case stated on question of law

(1) Despite anything contained in sections 187 and 188 the Registrar or an arbitrator may in the course of or on making a determination in a dispute refer a question of law arising from any dispute to the Court, by way of case stated for the opinion of that Court.

(2) A judge may consider and determine any question of law so referred and the opinion given on such question shall be final and binding.

190. Enforcement of award and recovery of loan

(1) An award by the Registrar or an arbitrator may by leave of the Court, be enforced in like manner as a judgement or order to the same effect, and where leave is so given, judgement may be entered in terms of the award.

(2) Where a dispute relates to the recovery of a loan made by a society to a member of that society, such a dispute may, despite section 187, be brought before the magistrate for the district in which the society conducts business.

(3) The provisions of any law which places a monetary limitation on the jurisdiction of a magistrate shall not apply with respect to any dispute referred to a magistrate under subsection (2).

(4) An appeal shall lie to the Court of Appeal with respect to the decision of a magistrate under this section.

PART 14 SPECIALIZED SOCIETIES

191. Interpretation and application

(1) In this Part—

“**consumer society**” means a society whose primary purpose is to purchase, procure, process, manufacture, exchange, hire or deal in goods or services for sale at retail to its members who are to be the ultimate users or consumers of those goods and services;

“**credit union**” means a registered society providing cooperative savings and lending business for its members;

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

"housing society" means a society whose primary purpose is to provide housing units for occupancy by its members as nearly as possible to cost;

"housing unit" means housing accommodation intended for individual or family use;

"industrial society" means a society whose primary purpose is to operate an enterprise in which its members are the workers necessary for the operation;

"liquid assets" means assets maintained by a credit union to ensure that it can meet its commitments with respect to loans and withdrawal of deposits.

Division A: Credit Unions

192. Restrictions

(1) A credit union shall not carry on any business that is contrary to this Act, the regulations or its by-laws.

(2) A credit union shall not—

- (a) engage in any business not appertaining to a credit union;
- (b) underwrite insurance or the issue of securities by another person;
- (c) act as agent for any insurance company or for any person in the placing of insurance; or
- (d) subject to subsection (3), require, directly or indirectly, that a borrower place insurance for the society of the credit union in any particular insurance agency.

(3) Subsection (2)(c) does not prevent a credit union from requiring insurance for the security of the credit union.

(4) An act of a credit union, including the transfer of property to or by a credit union shall not be contrary to this Act or the regulations.

(5) Despite subsection (2)(a), a credit union may, with the permission of the Registrar, do all other acts and things as are incidental or conducive to or consequential upon the attainment of its objects.

193. Liquid assets

(1) Every credit union shall maintain liquid assets in the amount specified in section 119 and in the form prescribed.

(2) Any credit union which fails to maintain the liquid assets required by this section may be placed under a receiver under Part 10 by the Registrar.

194. Allowance

Every credit union shall make an allowance for doubtful loans in accordance with the requirements set out in the regulations.

195. Loan Approval

(1) Subject to this Act and the regulations, every loan must be approved in accordance with the policies established by the directors before any funds are advanced.

(2) A loan to a director, a credit committee member, a supervisory committee member or an employee of a credit union or any person connected with one of them must be approved in the manner prescribed in the regulations.

(3) Any persons who approve or grant a loan in contravention of this Act or the regulations commit an offence and on conviction shall be held jointly and severally liable for any losses resulting to the credit union in connection with that loan.

196. Security for loans

Subject to any restrictions that may be prescribed in the regulations, a credit union may take any security for loans that it considers advisable and in keeping with sound business practices.

197. Loan limits

(1) Loans shall be made only to members and to other registered societies.

(2) The by-laws shall provide for limits on the amounts of loans to any one member or on any type of loans.

198. Reporting loans

(1) Where a credit union is reporting loans on the balance sheet in its annual financial statements, it shall report the loans at their net estimate value after deducting the allowance for doubtful loans under section 193(1).

(2) Any advance given by way of overdraft or line of credit is deemed to be a loan for the purposes of the balance sheet and must be reported as a loan.

199. Interest on loans

(1) The maximum intervals at which interest on a loan must be paid may be prescribed in the regulations.

(2) Where a borrower has not paid the interest on his or her loan for a period determined in the regulations, the credit union shall not include that interest in income.

200. Deposits

(1) Subject to section 16, a credit union may, without the authority, aid, assistance or intervention of any other person or official—

- (a) receive deposits from any person, whatever his or her age, status or condition in life whether or not that person is qualified by the law to enter into ordinary contracts; and
- (b) pay any or all of the deposit and any or all of the interest on the deposit to or to the order of that person unless, before payment, the money so deposited is claimed by some other person—
 - (i) in any action or proceeding to which the credit union is a party and in respect of which service of a writ or other process originating such action or proceeding has been made on the credit union, or
 - (ii) in any other action or proceeding pursuant to which an injunction or order made by the Court requiring the credit union not to make payment of the money or to make payment of it to a person other than the depositor has been served on the credit union,

and in that case the money so deposited may be paid to the depositor with the consent of the claimant or to the claimant with the consent of the depositor.

(2) Deposits may be accepted in the manner and form and on any condition that may be prescribed in the regulations.

201. Credit union and trusts

(1) A credit union is not bound to see to the execution of any trust, whether express, implied or constructive, under which any deposit or share is subject.

(2) Where any deposit or share is subject to a trust of which the credit union has notice, the receipt or order—

- (a) of the trustee in whose name the deposit or share stands; or
- (b) if the deposit or share stands in the names of 2 or more trustees, all those trustees or any of them who, under the document creating the trust, may be entitled to receive the deposit or share,

is, despite any trust to which the deposit or share is subject, a sufficient discharge for the payment of any money payable in respect of the deposit or share, and the credit union is not bound to see to the application of any money paid on the receipt or order.

(3) Despite any neglect or omission on the part of a credit union to enter a proper description in its books, no executor, administrator, guardian, committee or trustee who is entered on the books of the credit union as a member, or who is described as representing a named estate, trust or trust beneficiary in such capacity is personally liable to the credit union with respect to the share that he or she represents.

(4) The estate or trust beneficiary represented by a person described in subsection (3) continues to be liable to the credit union in the same manner and to the same extent as if the testator, minor, ward, person of unsound mind, beneficial trust or their trust beneficiary were entered on the records of the credit union as the holder of the shares.

Division B: Consumers Societies and Housing Societies

202. Restrictions on directorship

(1) Subject to subsection (2), an employee of a consumers society or housing society shall not be a director of the society.

(2) A society may provide in its by-laws that no more than $\frac{1}{3}$ of its directors may be employees.

203. Relationship with members

The relationship between a housing society and its members is not a relationship between landlord and tenants.

204. By-laws

The by-laws of a housing society must, in addition to the matters required to be set out in it by section 10, include the following—

- (a) the manner in which each member may be required to furnish capital for the purposes of the society;
- (b) the manner in which a member may be required to pay for housing charges or other reserves;
- (c) the basis for fixing the amount of housing charges;
- (d) subject to section 27, the manner of withdrawal by a member and the repayment of a member's interests in the society; and
- (e) the rules governing any leases of housing units by members to non-members.

205. Amendment of by-laws

Where the by-laws of a society provide that it is a housing society or that this Part applies to the society, the society shall not repeal or amend that provision of the by-laws without the consent of the Registrar.

206. No interest on share capital

Where a housing society has a capital the society shall not pay any dividend on the share capital to its members.

207. Right to possession terminated

(1) Where a person's membership in a housing society is terminated, any right of that person to possess or to occupy residential premises acquired by virtue of membership in the society is terminated.

(2) Where a person's membership in a housing society is terminated and the member does not give up possession of the housing unit he or she occupies, the housing society may apply to the Court to recover possession or to recover any arrears of housing charges.

208. Abandoned goods

(1) Where a member—

- (a) has his or her membership terminated or has vacated or abandoned the housing unit formerly occupied by him or her; and
- (b) has left property in the housing unit,

the housing society may apply to the district court for the district where the housing unit is situate for an order authorising the member to remove the property from the housing unit and sell or otherwise dispose of it.

(2) The magistrate may make an order under subsection (1) where he or she is satisfied that the housing society has made a reasonable effort to locate the former member.

(3) Where a housing society sells or otherwise disposes of property under an order made under subsection (2), it shall pay into the district court, to the credit of the former member, any remaining proceeds of the disposition after deducting—

- (a) any amount with respect to costs incurred by it relating to the disposition that it would be authorised to retain if the property were goods sold under distress for housing charges; and
- (b) any arrears of housing charges and damages that the magistrate allows.

(4) Where a former member does not claim the remaining proceeds described in subsection (3) within 3 months after the date the money was paid into the district court, the money shall be paid into the Consolidated Fund.

(5) Where a housing society removes, sells or otherwise disposes of property under an order made under subsection (2), the housing society is not liable in any action taken by the former member with respect to the removal, sale or disposition.

Division C: Industrial Societies

209. Membership

(1) In a workers' society, at least 75% of all employees must be members of the society.

(2) Subject to subsection (3), a workers' society shall not sub-contract out more than 50% of its work.

(3) Where a workers' society applies to the Registrar, he or she may allow the workers' society to sub-contract out more than 50% of its work.

210. By-laws

In addition to the matters required to be set out in the by-laws under section 10, the by-laws of a society must include—

- (a) conditions of admission, expulsion or suspension of its members;
- (b) a procedure for laying off members when there is a lack of work and a procedure of recall to work;
- (c) remuneration of workers involved in the day to day work of the society; and
- (d) allocation of bonus among members.

211. Restriction on registration

An industrial society shall not be registered where the acquisition of goods for sale to the public is one of its principal objects stated in its by-laws.

212. Bonus based on labour

When allocating among creditors or paying a bonus to the members of an industrial society the directors may take into account the labour contribution of each member.

213. Employees may be directors

Despite any other provision of this Act, the majority of directors of an industrial society may be employees of the society.

PART 15 APEX BODY

214. Establishment and constitution of apex body

Registered societies may establish an apex body which may be called the National League or National Council and which shall be composed of a member representative of all societies which exist in Saint Lucia.

215. Functions

(1) The National League or National Council shall co-ordinate, assist and promote all registered societies and shall perform such functions as may be determined by its constituent members.

(2) Without prejudice to subsection (1), the National League or National Council shall have responsibility for the administration and management of the Development Fund as established by section 120.

216. Officers

(1) The officers of the National League or National Council shall be elected at the first meeting of that body and shall hold office for a period of one year and thereafter the election of such officers shall be in accordance with the by-laws of the National League or National Council.

(2) The National League or National Council shall regulate its own procedure.

217. Consultation by registrar

The Registrar shall, consult the National League or National Council with respect to matters relating to the development of registered societies.

PART 16 OFFENCES

218. Corrupt practices and bribery

(1) A member, agent or employee of a society commits an offence who corruptly accepts, agrees to accept, obtain whether for himself or herself or another, any gift or consideration as an inducement or reward for—

- (a) doing or forbearing to do any act relating to the business of the society; or
- (b) for showing favour or disfavour to any person in relation to the business of the society.

(2) A person who corruptly gives, agrees to give, or offers such gift or consideration to any member, agent or employee of a society as inducement or reward for any purpose mentioned in subsection (1) commits an offence.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$5,000 or to imprisonment for 2 years or both, and on indictment, to imprisonment for 3 years.

(4) A person who commits an offence under subsection (2) is liable to imprisonment for a term of 5 years.

(5) In this section “consideration” includes valuable consideration of any kind.

219. Falsely obtaining property of society

(1) Any person who—

- (a) obtains possession of any property or is granted any loan by a society by false representation or other corrupt means;
- (b) wrongfully withholds or misapplies any such property or loan; or
- (c) wilfully applies any part of the property or loan for purposes other than those directed or expressed in the by-laws of the society or authorised in this Act or the regulations,

commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for one year and on conviction on indictment to a fine of \$30,000 or to imprisonment for 5 years.

(2) In any proceedings under this section the person accused may, in addition to any penalty imposed, be ordered—

- (a) to deliver up any property or repay any sum of money to which the proceedings relate; and
- (b) pay the cost of the proceedings.

220. Failure to comply with Act

(1) A society or any officer or member of a society or any other person commits an offence—

- (a) who fails without reasonable cause or neglects or refuses to comply with any requirement of this Act or the regulations or to furnish any information; or

- (b) who purporting to comply with any such requirement, furnishes false information.

(2) A person who without reasonable cause disobeys any summons, order or direction lawfully issued under this Act or the regulations commits an offence.

(3) A officer or member of a society who without reasonable cause contravenes the by-laws of the society in relation to his or her duties or functions as such officer or member commits an offence.

(4) A person found guilty of an offence under this section is liable on summary conviction to a fine of \$2,500 or imprisonment for 6 months or both and to a further fine of \$50 for each day for which the contravention continues after a conviction is obtained.

221. Dealing in property subject to charge

(1) A person who—

- (a) fraudulently or clandestinely removes any property comprised in a charge created in favour of a society from the place where such property was situate at the time of the execution of the charge; or
- (b) knowingly disposes of, or deals with or attempts to dispose of or deal with such property without first obtaining in writing leave of the society,

commits an offence and is liable on summary conviction to a fine of \$2,500 or to imprisonment for 6 months or both.

(2) The Court may in addition to any penalty imposed on a person under subsection (1) require that person to repay such amount of the loan with interest as has not been repaid at the date of the conviction; and the payment of that amount shall discharge the liability of the borrower to repay the loan.

222. Offences with respect to reports

(1) A person commits an offence who makes or assists in making a report, return, notice or other document, required in this Act or the regulations to be sent to the Registrar or any other person, which—

- (a) contains an untrue statement of a material fact; or
- (b) does not state a material fact required in the report or necessary to make a statement contained in the report not misleading in the light of the circumstances in which it was made.

(2) A person who commits an offence under subsection (1) is liable on summary conviction—

- (a) in the case of an individual, to a fine of \$5,000 or to imprisonment for a term of one year or both;
- (b) in the case of a person other than an individual, to a fine of \$30,000.

(3) Where the person who commits an offence under subsection (1) is a body corporate and whether or not the body corporate has been prosecuted or convicted, any director or officer for the body corporate who authorises, permits or acquiesces in the offence also commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 6 months or both.

(4) A person does not commit an offence under subsection (1) or (3) where the untrue statement or omission—

- (a) was unknown to him or her; and
- (b) in the exercise of reasonable diligence, could not have been known to him or her.

223. Contravention of Act

A person who—

- (a) without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is otherwise provided; or
- (b) fails to give any notice, send any return or document that is required for the purpose of this Act,

commits an offence and is liable on summary conviction to a fine of \$1000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

224. Use of words “credit union” or “co-operative”

(1) A person doing business in Saint Lucia shall not use the words “credit union” or any abbreviation or derivation thereof as part of its name, or with respect to its goods, wares, merchandise or services or its method of conducting its business, or hold itself out to be a registered society unless it is registered under this Act.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$5,000 and to a further fine of \$100 for each day for which the contravention continues after a conviction is obtained.

225. Order to comply

Where a person is convicted of an offence under this Act or the regulations, the court may, in addition to any punishment imposed, order the person to comply with the provision of this Act or the regulations for the contravention of which he or she has been convicted.

226. Limitation

The effluxion of time is no bar to prosecution for an offence under this Act.

227. Preservation of civil remedy

A civil remedy for an act or omission under this Act is not suspended or affected by reason that the act or omission is an offence under this Act.

PART 17 MISCELLANEOUS

228. Interpretation

In this Part—

“**duplicate originals**” means the 2 copies of the by-laws or statements;

“**statement**” means a special resolution stating an intent to dissolve mentioned in section 158.

229. Execution and filing

(1) Where this Act requires that by-laws or a statement relating to a society shall be sent to the Registrar, unless otherwise specifically provided, the society shall send 3 copies of the by-laws or statement signed by a director or an officer of the society.

(2) Subject to the other provisions of this Act, where the Registrar receives duplicate originals of any by-laws or statement under subsection (1) and they are accompanied by any other required documents and the prescribed fees, the Registrar shall—

- (a) endorse on each of the duplicate originals the word "Registered" and the date of the registration;
- (b) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the by-laws or statements;
- (c) file a copy of the certificate and attached by-laws or statement;
- (d) send to the society the original certificate and attached by-laws or statement; and
- (e) publish in the Gazette notice of the issue of the certificate.

(3) The Registrar may date a certificate mentioned in subsection (2) as of the day he or she receives the by-laws or statement issued under which the certificate is issued or as of any later day specified by the person who signed the by-laws or statement.

(4) A signature required on a certificate mentioned in subsection (2) may be printed or otherwise mechanically produced on the certificate.

230. Waiver of notice

Where a notice or document is required by this Act or the Regulations to be sent, the sending of the notice or document may be waived or the time for sending the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive the notice or document.

231. Certificate of society

(1) A director or officer of a society may—

- (a) sign a certificate stating any fact set out in; or
- (b) certify a copy of the whole or any part of, the by-laws, or any other contract to which the society is party or the minutes of a meeting of the directors, a committee of directors or the members.

(2) A certificate or certified copy described in subsection (1) is admissible in evidence as *prima facie* proof of the facts contained in the certificate or certified copy without proof of the signature or official character of the person appearing to have signed the certificate or the certification.

232. Copies of documents

Where a notice or document is required to be sent to the Registrar under this Act, the Registrar may accept a photostatic or photographic copy of the notice or document.

233. Alternation

Where the Registrar is authorised by the person who sent a notice or document or his or her representative, the Registrar may alter the notice or document, but he or she shall not alter an affidavit or statutory declaration.

234. Corrections

(1) Where a certificate containing an error is issued to a society by the Registrar, the directors or members of the society shall, on the request of the Registrar—

- (a) pass the resolutions and send to him or her the document required to comply with this Act; and
- (b) take any other steps that he or she may require,

and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) must bear the date of the certificate it replaces.

235. Exemption from stamp duty and taxes

(1) Every society registered under this Act is exempt from any stamp duty, taxes and fees which, under any law for the time being in force, instruments executed by or on behalf of such society or by an officer or member and relating to the business of such society, or any class of such instruments, are respectively chargeable.

(2) Despite anything contained in any enactment every registered society shall be exempt from the payment of income tax, corporation tax and any other tax on the incomes of such societies.

236. Limitation of jurisdiction

Except as is expressly provided in this Act, a civil court shall not have any jurisdiction in respect of any matter concerned with the dissolution of a society under this Act.

237. Proof of entries in books and documents

(1) A copy of any entry in a book or other document that is required to be kept by this Act shall, if certified by the Registrar be received in any legal proceedings, civil or criminal, as *prima facie* evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is admissible.

(2) An officer of any such society shall not, in any legal proceedings to which the society is not a party, be compelled to produce any of the society's books, the content of which can be proved under subsection (1), or to appear as a witness to prove any matters, transactions or accounts therein recorded, unless the Court for special reasons so directs.

238. Regulations

For the purpose of carrying out this Act according to its intent, the Minister may make regulations—

- (a) defining, enlarging or restricting the meaning of any word used but not defined in this Act;
- (b) requiring the payment of and prescribing the amount of any fee with respect to—
 - (i) the filing, examination or copying of any document, or
 - (ii) any action that the Registrar is required or authorised to take under this Act;
- (c) prescribing the procedure for appeals to the Registrar;
- (d) prescribing business in which societies or any class of societies may not engage in without the prior approval of the Registrar;
- (e) exempting any society or class of societies from any provision of this Act; and
- (f) prescribing any other matter or thing required or authorised to be prescribed by this Act.

PART 18 TRANSITIONAL

239. The former Act

In this Part “the former Act” means the Co-operative Societies Ordinance.

240. Existing directors and officers

(1) The existing directors and officers shall continue to hold office in accordance with the former Act and the by-laws of the Society.

(2) Where new directors of a society are to be elected after the commencement of this Act, such directors shall be elected in accordance with this Act.

241. Existing societies

All societies which prior to the commencement of this Act were duly registered under the former Act shall be deemed to be registered under this Act.

CHAPTER 12.06 CO-OPERATIVE SOCIETIES ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Co-Operative Societies Regulations – Section 238
 2. Co-Operatives Societies (Appeals Tribunal) Regulations – Section 238
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Co-Operative Societies Regulations – Section 238

(Statutory Instruments 90/1999 and 72/2001)

Statutory Instrument 90/1999 .. in force 30 October 1999

Amended by S.I. 72/2001 .. in force 23 June 2001

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CO-OPERATIVE SOCIETIES REGULATIONS – SECTION 238

Commencement [30 October 1999]

1. Citation

These Regulations may be cited as the Cooperative Societies Regulations.

2. Definitions

In these Regulations—

“**association**” means a group of people organised for some common purpose but without corporate personality;

“**bank**” means a bank registered under the Banking Act;

“**corporation**” means a body corporate incorporated under law;

“**document**” means a report, return or other document required to be sent to the Registrar under the Act or these Regulations;

“**former-Act**” means the Cooperative Societies Act, 1946;

“**society**” means a registered primary, secondary or tertiary society as defined in regulation 21(1);

“**unincorporated organisation**” means a body of persons not incorporated under law.

3. Forms required

The forms set out in Schedule 1 are to be used for the purposes of the Act and these Regulations.

4. Fees

The fees to be paid under the Act and these Regulations are those fixed in Schedule 2.

5. Filling out of document

(1) Where an item required to be disclosed in a document does not apply, the person preparing the document shall indicate that by placing the phrase "not applicable" or the abbreviation "N/A" in the space provided in the document.

(2) Where—

(a) any provision required to be set out in a document is too long to be set out in the space provided in the document; or

(b) an agreement or other document is to be incorporated by reference and to be part of the document,

the person preparing the document may incorporate the provision, agreement or other document.

(3) A provision, agreement or other document referred to in subregulation (2) may be incorporated by—

(a) setting out the phrase: "The annexed (number) schedule is incorporated in this form" in the space provided on the document; and

(b) annexing the provision, agreement or other document to the document.

(4) A separate annex is required with respect to each item that is incorporated by reference in a document under subregulations (2) and (3).

6. Dividend rate

The board of directors shall recommend to the annual general meeting the rate of dividends to be paid on shares and the annual general meeting may either approve the rate recommended by the board of directors or approve a lower rate such however that the annual general meeting shall not at any time approve a higher rate of dividends than that recommended by the board of directors.

(Substituted by S.I. 72/2001)

7. Transfer of shares

(1) The Registrar may determine the forms to be used for the transfer of shares.

(2) A transfer of a share shall not be registered if made by a member who is indebted to the society, without the approval of the board, and until the transfer of a share is registered no right shall be acquired against the society by the transferee nor shall any claim of the society upon the transferor be affected thereby.

8. Minimum amount of fidelity bond

(1) For the purposes of section 87 of the Act, a blanket security or fidelity bond shall be given by all officers including the president, vice-president, secretary, treasurer, secretary-treasurer, manager and any other authorised signing officer, and every employee of the society.

(2) In respect of the credit union the amount of security or fidelity bond required is \$50,000.

(3) In respect of other cooperative societies the minimum amount of the security or fidelity bond is—

(a) \$1,000 in the case of a society with sales or revenue not exceeding \$25,000 per year;

- (b) \$2,000 in the case of a society with sales or revenue greater than \$25,000 but not exceeding \$100,000 per year; and
- (c) \$5,000 in the case of a society with sales or revenues greater than \$100,000 per year.

9. Annual financial statements and special returns

(1) The comparative financial statements required under section 124 of the Act must include—

- (a) a balance sheet;
- (b) a statement of income;
- (c) a statement of retained earnings; and
- (d) a statement of changes in financial position.

(2) Financial statements need not be designated by the names set out in paragraphs (a) to (d).

(3) Additional periodic performance returns, as required by the Registrar under section 141(3) of the Act, shall also be provided in an accurate and timely manner so that the Department's records are up-to-date and reliable.

10. Auditor's report

For the purposes of section 137 of the Act, the auditor of a society shall indicate in his or her report whether or not the financial statements contained in his or her report—

- (a) were prepared in accordance with generally accepted accounting principles; and
- (b) are presented on a basis consistent with that of the preceding year.

11. Standard of financial statement and Auditor's Report

The financial statements referred to in section 124 of the Act and the auditor's report referred to in section 137 of the Act must, except as otherwise provided by these Regulations, be prepared in accordance with standards approved by the Institute of Chartered Accountants of Saint Lucia.

12. Election of directors

(1) This regulation applies for the purposes of section 50 of the Act.

(2) Before accepting the nomination of a person, the chairperson of the meeting called to elect directors shall satisfy himself or herself that the person to be nominated—

- (a) is qualified under the Act and the by-laws of the society to be director; and
- (b) has consented to the nomination.

(3) Where the number of candidates nominated does not exceed the number of directors to be elected, the chairperson of the meeting called to elect directors shall declare all the candidates elected.

(4) Subject to subregulation (7), only one ballot is to be taken and the number of candidates equal to the number of directors to be elected receiving the highest number of votes are to be declared elected.

(5) Where candidates are to be elected for varying terms, the candidates receiving the highest number of votes cast are to be declared elected for the longest or the longer terms, as the case may be.

(6) For the purposes of these Regulations a term shall not exceed 3 years.

(7) Where 2 or more candidates receive an equal number of votes, the members present at the meeting may, by resolution, provide that a second ballot be cast to break the tie.

(8) Where the meeting does not decide to hold a second ballot under subregulation (7), the chairperson of the meeting called to elect directors shall draw lots, and the candidate whose lot is drawn is to be declared elected.

(9) Where a member votes for more than the number of directors to be elected on his or her ballot, his or her ballot is not to be counted.

(10) Where a registered society submits a bye-law to the Registrar that provides for a method of electing directors other than at a general meeting of members and the Registrar is satisfied that the bye-law does not contravene subregulations (4), (5), (6), (7), (8) and (9), the Registrar may approve the bye-law and, on and after the date of that approval, the directors of the society shall be elected in the manner provided in the bye-law.

(11) A society shall not include in any bye-law governing the manner of electing its directors any provision that prohibits its members from nominating as a candidate for election as director any member who—

- (a) is qualified to be a director; and
- (b) consents to the nomination.

13. Meetings of directors

The directors of a registered society shall hold at least one meeting every month.

14. Appointment of Secretary and Treasurer

(1) This regulation applies for the purposes of section 51 of the Act.

(2) The board of directors of a society shall—

- (a) appoint a secretary and treasurer to the society and a secretary or treasurer shall not hold office for more than 2 consecutive terms; or
- (b) appoint a secretary and a treasurer and unless the secretary and treasurer so appointed are members of the board, shall have power to fix the remuneration for their service.

(3) An appointment made or remuneration fixed by the board in accordance with subregulation (2) shall not be valid, effective, payable or recoverable unless the appointment and remuneration are approved by the Registrar.

(4) The Registrar shall inform the board in writing of the approval and remuneration of the secretary and the treasurer.

15. Duties of Secretary and Treasurer

(1) The secretary of a society shall—

- (a) keep the minutes of any meeting of the society or board;
- (b) ensure that all records, books, papers and other documents of the society are kept in a safe place in the office of the society;
- (c) conduct any correspondence on behalf of the society;

- (d) attend all meetings of the society and the board and have with him or her the necessary minutes and record books and correspondence relative to the business of the society;
 - (e) issue notices for all meetings of the board and general membership of the society in accordance with the Regulations and bye-laws;
 - (f) sign and execute, jointly with the president, all deeds and conveyances real or personal property, all fixed deposits or share certificates and such other documents as the board may specify;
 - (g) review the minutes of all committees of the society; and
 - (h) perform such other duties as are prescribed by the bye-laws or authorised by the board.
- (2) The treasurer of the society shall—
- (a) receive all monies due and payable to the society and issue receipts for the same;
 - (b) deposit all monies received in the name of the society in such bank or depository as specified by the board;
 - (c) sign all cheques, notes, bills of exchange and other documents necessary to effect the business of the society;
 - (d) keep a just and true record of all financial transactions effected by the society in the books provided for the purpose;
 - (e) keep charge and control of all cash, securities, books and other documents and vouchers for all payments made and receipts issued on behalf of the society;
 - (f) reconcile or cause to be reconciled at least once per month the members' ledger or accounts;
 - (g) reconcile or cause to be reconciled at least monthly, all passbooks or statements received from depositories with the relative control accounts in the general ledger;
 - (h) keep separate all monies belonging to the society;
 - (i) produce a current statement of the society's monies on demand;
 - (j) prepare the annual statement of accounts, the balance sheet, the monthly financial statements and any other statements as the board may request;
 - (k) make payments as authorised by the board and obtain receipts for the same; and
 - (l) perform any other duties as the board may prescribe.

(3) The duties of the secretary and treasurer may be modified or altered in keeping with the allotment of duties assigned by the board to the manager and other employees of the society.

16. Supervisory Committee

For the purposes of sections 62 to 68 of the Act and subject to the Act and bye-laws, the supervisory committee shall—

- (a) meet immediately after the first annual general meeting and immediately after each annual meeting of the society to organise for the current year;
- (b) appraise the policies and operating procedures of the society and make recommendations to the board and to the credit committee;

- (c) attest to the monthly and annual returns filed in compliance with sections 124 and 141 of the Act;
- (d) determine periodically but not less than once per quarter, whether the provisions of the Act, regulations, bye-laws and the relevant policies have been complied with—
 - (i) in making loans, including loans to officials, business loans and loans to organisations, associations and corporations,
 - (ii) in respect of any overdrawing from deposit accounts,
 - (iii) in the administration of members' accounts,
 - (iv) in the maintenance of the minutes of meetings of the board and the credit committee;
- (e) receive and investigate any complaints made by members of the society about management of the society;
- (f) monitor the management of the society;
- (g) ensure that the society complies with the provisions of the Act, regulations and bye-laws; and
- (h) verify the assets of the society and monitor whether the assets are properly protected.

17. Education Committee

(1) The board of directors shall, appoint a committee which shall consist of 5 persons, who may also be members of any other committee.

(2) The committee shall be in charge of education and propaganda and will advise and act in collaboration with the leaders of discussion groups, assist in the provision of literature for the use of members, and arrange for the purchase of books and magazines, particularly in relation to the Co-operative Movement, and such literature that will be useful for education.

(3) The committee shall submit to the board of directors a report of its activities, and a requisition to cover the cost of literature, and any other materials, according to the funds set for that purpose.

(4) The committee shall ensure that the education fund is used for the purpose for which it is intended, and in conformity with the requirements of section 33(7) of the Act, and the rules of the registered society.

(Inserted by S.I. 72/2001)

18. Procedures on appeal of termination of membership

(1) Where a person appeals the termination of his or her membership to the Registrar under section 31 of the Act, the person shall submit a written statement of membership to the Registrar within 30 days of the date of—

- (a) the members' resolution terminating the person's membership under section 29 of the Act; or
- (b) the members' confirmation of the directors' order terminating the person's membership under section 28(2) of the Act.

(2) A person appealing the termination of his or her membership shall state in his or her written statement required under subregulation (1)—

- (a) any reasons for the termination of his or her membership of which he or she has personal knowledge;
- (b) the grounds on which his or her appeal lies; and

- (c) any relevant facts or information, in addition to those described in paragraphs (a) and (b), that the Registrar may require.

(3) The Registrar shall hear an appeal under section 31 of the Act within 30 days after the date on which he or she receives a completed written statement under subregulation (1) and inform the appellant, in writing, of the outcome of the appeal within 14 days after hearing the appeal.

19. Unclaimed amounts in case of terminated member

Where the amount held to the credit of a member whose membership has been terminated—

- (a) is less than \$50, the society may add that amount to its income from operations; or
- (b) is \$50 or more, the society shall place that amount in a special reserve fund.

20. Amendment of Bye-Laws

(1) Where under sections 10 and 48 of the Act a registered society amends its bye-laws, such amendment shall be made by a resolution of members of the registered society at a general meeting.

(2) Every resolution under subregulation (1) shall not be valid and effective unless it was taken by a majority of not less than $\frac{2}{3}$ of the members present at the general meeting at which the resolution was proposed.

(3) A copy of a resolution under subregulation (1) shall be forwarded to the Registrar together with 3 copies of the amendment.

21. Bye-Laws of housing society

For the purposes of section 204, a housing society must provide in its bye-laws that—

- (a) the society shall give a copy of the bye-laws and the occupancy agreement to every member;
- (b) each member is entitled to have quiet enjoyment of his or her housing unit;
- (c) either the society or the member is responsible for—
 - (i) the maintenance of the housing unit in a safe, habitable and reasonable state of repair,
 - (ii) the repair or replacement of fixtures, and
 - (iii) any damage to the housing unit;
- (d) the society and its agents, except in the case of an emergency, are required to give reasonable notice to the member prior to entry of the member's unit;
- (e) the society shall give 3 months notice of any increase in housing charges except where—
 - (i) the Registrar gives his or her approval for a shorter notice, or
 - (ii) the members have unanimously approved the increase at a general meeting;
- (f) the society shall give a minimum of 30 days notice to a member of the termination of his or her membership, except where a member contravenes any bye-laws governing—

- (i) ordinary cleanliness of the housing unit after having received written notice of the contravention,
 - (ii) the use of the premises for prohibited purposes, or
 - (iii) payment of housing charges; and
- (g) there is to be no acceleration of housing charges.

22. Liquidity

(1) For the purposes of this regulation—

- (a) “**liabilities**” include any deposits of money made in the credit union, any accrued interest on those deposits and any loans taken out by the credit union;
- (b) “**line of credit**” means the maximum amount which a credit union is entitled to borrow at any given time;
- (c) “**liquid assets**” include Eastern Caribbean currency and deposits of Eastern Caribbean currency made by a credit union with a bank or any other institution that takes deposits, and that the credit union is entitled to withdraw on demand as readily marketable securities;
- (d) “**marketable securities**” include treasury bills, government debentures, treasury notes and other securities listed on the Eastern Caribbean securities exchange;
- (e) “**secondary society**” means a registered society which comprises mainly primary societies; and
- (f) “**tertiary society**” means a registered society all of whose members are secondary societies.

(2) A credit union shall at all times—

- (a) have in its possession liquid assets; or
- (b) maintain a line of credit,
in an amount sufficient to enable the society to meet its normal cash flow requirements as estimated by the society.

(3) A credit union shall at all times maintain an account—

- (a) with a bank;
- (b) with a loan company or trust company incorporated under the Companies Act; or
- (c) with a secondary society or a tertiary society whose bye-laws provide for the acceptance of deposits, if the deposits can be repaid on demand.

(4) The account mentioned in subregulation (3) shall be—

- (a) in an amount that is not less than 10% of the total liabilities of the registered society as shown on the society’s most recent financial statement prepared and submitted in accordance with regulation 10; and
- (b) in the form of demand deposits or deposits redeemable on the notice of the society.

(5) A credit union shall maintain the account described in subregulation (3) separate and apart from any other accounts or funds.

(6) Despite subregulation (4)(b) and subject to subregulation (7), where a credit union—

- (a) was registered under the former Act, as that Act existed on the day before the coming into force of these Regulations; and
- (b) maintained, on the commencement of the Act, a reserve,
the moneys maintained, on the commencement of the Act, in the reserve mentioned in paragraph (b) may be used to satisfy the requirements of subregulation (4)(a).

(7) Where—

- (a) a credit union specified in subregulation (6) does not otherwise have sufficient moneys on account to satisfy the requirements of subregulation (4)(a); and
- (b) any part of the reserve mentioned in subregulation (6) consists of unencumbered securities of the Government,
those securities shall mature within 5 years of the coming into force of these Regulations in order to be eligible to be used to satisfy the requirements of subregulation (4)(a).

(8) Where securities will mature after 5 years of the coming in force of these Regulations, the credit union shall, as soon as practicable after the coming into force of these Regulations, sell those securities and use the proceeds of the disposition to purchase deposits in accordance with the requirements of subregulation (3).

(9) Within 6 months of the coming into force of these Regulations, a credit union shall maintain at least 50% of the amount required by subregulation (4)(a) in liquid assets.

(10) Subject to section 119(3) of the Act, where a credit union does not have in its possession liquid assets, does not maintain a line of credit or does not do both of those things in an amount sufficient to enable the credit union to meet its normal cash flow requirements as required by subregulation (2), the credit union may use the amount in its account required to be maintained by subregulations (3) and (4) to satisfy the requirements of subregulation (2).

23. Loan approval

(1) An application for a loan must be made on a form provided by the society and must state—

- (a) the purpose for which the loan is required;
- (b) the security, if any, offered; and
- (c) any other information the credit committee or loans officer requires.

(2) When a loan application is approved, the credit committee or loans officer approving the loan shall approve the application in writing and ensure that the application and approval specify with respect to the loan—

- (a) the amount approved;
- (b) the terms of payment;
- (c) the rate of interest;
- (d) any security to be held by the credit union;
- (e) any guarantees to be taken;
- (f) any conditions that may be specified by the credit committee or the person approving the loan in addition to those mentioned in paragraphs (a) to (e); and
- (g) the date of the approval.

(3) A loan granted by a credit union shall be evidenced by a signed loan agreement between the credit union and the applicant.

(4) A member of a credit committee or of the board or supervisory committee or any other person who has been authorised to approve loans shall not be present at the discussion of the approval of or approve a loan to himself or herself or any person with whom he or she has a fiduciary relationship.

24. Borrowing by director etc

(1) Subject to sections 115(3), 115(4) and 115(5) of the Act, an officer, director, credit committee member, supervisory committee member, or employee of a society shall not borrow from the society an amount in excess of his or her holdings therein in shares, deposits and accumulated earnings unless—

- (a) adequate security is provided for the amount of the loan in excess of the value of the shares, deposits, accumulated dividends and interest; and
- (b) the loan is approved by the vote of $\frac{2}{3}$ of the other members of the board, credit committee and supervisory committee sitting together.

(2) A meeting referred to in subregulation (1) is not properly constituted unless a quorum of the members of the credit committee is present.

(3) A registered society shall not lend to any member an amount exceeding—

- (a) ten per cent of the aggregate of the registered society's share capital, retained earnings and reserves;
- (b) the aggregate of the members' ordinary deposits and the society's reserves; or
- (c) such lesser percentage as is specified in the bye-laws.

25. Security for loans

The board of directors shall, by resolution, establish a policy with respect to—

- (a) the collateral security or guarantors required for approved loans; and
- (b) the manner in which the fair market value of any real property obtained as a security for a loan is to be calculated.

26. Maximum period for interest on loans

For the purposes of section 199(1) of the Act, interest on loans may be paid at intervals not exceeding one month.

27. Loan terms and conditions

The terms and conditions upon which each loan shall be granted and repaid shall include the following—

- (a) every application for a loan shall be accompanied by such information about the financial position and income of the borrower as the credit committee or loan officer may require;
- (b) a society shall not make a loan to an unincorporated organisation;
- (c) where a loan under paragraph (b) is contemplated, it shall be made to one or more of the members or officers of the organisation but the society shall, in any such particular case, require such additional security by way of endorsement of the promissory note as may be deemed desirable;
- (d) a loan shall not be made to a member if it would cause the total indebtedness of the member to the credit union to exceed 10% of the paid-up capital and deposits of the credit union;

- (e) the total of all loans made to associations, organisations or corporations shall not, at any time, exceed 25% of the total shares and deposits of the credit union;
- (f) a loan shall not be made to a company unless such loan is personally guaranteed by shareholders of the company holding a majority of the shares in value and in voting rights provided that such personal guarantee shall not be required where the loan is guaranteed by an organisation or agency of government approved by the Stabilisation Fund Board;
- (g) a loan shall not be made by a society to a corporation if a majority of the shares of the corporation are held by the officers and directors of the credit union unless the application has been approved by the Registrar in consultation with the League Board;
- (h) all transactions in the loan account of a member shall be shown by the necessary entries in a passbook or statement to be delivered to each member;
- (i) where a mortgage on land or buildings is taken as security for a loan, the amount loaned shall not exceed 80% of the market value of the land or buildings and where it is being contemplated to loan an amount which exceeds 80% of the market value of the land or building, approval shall first be granted by the Registrar of Co-operatives; (*Substituted by S.I. 72/2001*)
- (j) before such a loan is made, the credit committee or loan officer shall require that an appraisal of the market value of the property be made by an appraiser whom they believe to be competent and who is instructed and employed independently of any owner of the property on a form prescribed by the league and approved by the Registrar;
- (k) the expenses, if any, of any appraiser employed under paragraph (j) may be borne by the applicant for the loan.

28. Bad and doubtful loans

(1) When the whole or part of a loan made by a credit union remains unpaid for a period of 24 months after the date fixed for repayment in full of the monies loaned and no payment on account of principal has been made after that date, the amount of the principal remaining unpaid, subject to the approval of the board, shall be charged to and paid from the statutory reserve fund less any money standing to the credit of the borrower on the books of the credit union in a share or deposit account and less the market value of any security held by the credit union in respect of the loan.

(2) The board may, with the Registrar's approval, reduce the period of 24 months under subregulation (1);

(3) Any monies subsequently recovered with respect to such loans shall be paid into the reserve fund.

(4) All interest which has been collected thereon during the current year shall be deducted from the loan before the write off is made.

(5) With the approval of the board, any collection fees or commissions, or legal charges incurred in the collection of the loan which are not reversible from the debtor may be added to the loan before the write off is made.

29. Doubtful loans allowance

(1) When a credit union identifies a loan as a doubtful or uncollectable loan, the credit union shall immediately allow for the doubtful loan by—

- (a) establishing on its books and accounts an allowance for the doubtful loan in an amount equal to the difference between—

- (i) the book value of the loan, including any interest due and unpaid and interest accrued, and
 - (ii) the realisable book value of the loan as estimated by the credit union;
- (b) reporting on any income statement it prepares, including its annual income statement required under regulation 10, as a loss from income an amount as an allowance for doubtful loans equal to the sum of allowances for all doubtful loans established in accordance with paragraph (a); and
- (c) reporting on any balance sheet it prepares, including its annual balance sheet—
 - (i) the value, as an asset, of its doubtful loans in an amount equal to the value of all of the doubtful loans as stated on its books and accounts less the allowance for the doubtful loan established in accordance with paragraph (a), and
 - (ii) any property or other assets acquired in the financial years under a foreclosure realisation proceedings on a loan that was a doubtful loan at an amount not greater than the realisable value of the loan—
 - (A) as estimated by the credit union under paragraph (a)(ii); and
 - (B) as stated on the books and accounts of the credit union before the property or assets were realised under the foreclosure or other proceedings.

(2) Despite subregulation (1), a former-Act society in respect of the financial year prior to the society's continuance may, instead of charging its allowance for doubtful loans to its income in the manner required by subregulation (1)(b), charge the amount of the allowance as calculated under subregulation (1)(a) to the reserve required by the Act.

(3) A credit union shall report, at the end of each financial year, to the Registrar—

- (a) the number and amount of doubtful loans for which an allowance has been made in accordance with this regulation in that financial year;
- (b) the amount of allowance for doubtful loans made under subregulation (1) or (2) in the financial year; and
- (c) the value of property and other assets recovered in that financial year on doubtful loans.

(4) The board of directors of a credit union shall cause a list of all doubtful loans to be available at the registered office of the credit union for any examination required by the credit committee, supervisory committee and the auditor of the credit union, and the board shall send a copy of that list to the Registrar.

(5) The list mentioned in subregulation (4) includes, with respect to each doubtful loan—

- (a) the name of the borrower;
- (b) the amount of the loan; and
- (c) the amount of any allowance under this regulation.

(6) Where a credit union determines that the allowance for doubtful loans required by subregulation (1) will result in a net loss on its income statement for the financial year, it shall immediately notify the Registrar in writing of that fact.

30. Overdue loans

(1) The loss exposure on outstanding loans at the end of the fiscal year, shall be calculated in accordance with Schedule 3.

(2) For the purpose of these Regulations “overdue loans” means personal, mortgage or other types of loans on which the member is in default for more than 90 days on a payment of principal or interest according to any agreement he or she has with the credit union.

(Substituted by S.I. 72/2001)

31. Investment

(1) Moneys not required for current purposes of the credit union may be deposited or invested in accordance with section 114(1) of the Act.

(2) Section 114(1)(d) shall include shares and debentures in a suitably established Stabilisation Fund.

32. Use of statutory reserves

(1) Subject to the approval of the Registrar, a society may use its statutory reserves—

- (a) to make good, deficiencies created by its operations; and
- (b) to recoup losses on its investments.

(2) When the Registrar receives a request for approval under subregulation (1), he or she may—

- (a) exempt the society from compliance with regulation 29(1)(a) for any period of time that he or she considers appropriate;
- (b) restrict the purposes for which the society may use its statutory reserves; or
- (c) do all or a combination of the things mentioned in paragraphs (a) and (b).

33. Credit Committee

(1) For the purposes of section 57 of the Act and subject to the Act and the bye-laws, the credit committee of a credit union shall—

- (a) recommend to the board policies and procedures to be followed by the credit union for approving and granting loans made by the credit union;
- (b) monitor, through reports from the credit union’s auditor and other officers of the credit union, loans procedures used by the credit union;
- (c) review all applications for loans, loan extensions and revisions of the terms of loans that are referred to it by the board or an officer of the credit union; and
- (d) review reports of officers of the credit union that are submitted to it under subregulation (2).

(2) The credit committee shall keep a record, with respect to each application for a loan or a renewal or extension of a loan considered by it, of—

- (a) the name of the applicant;
- (b) the amount of the loan applied for or the change in the terms or conditions applied for; and
- (c) whether the application was approved, declined or deferred.

(3) Where, in the opinion of the Registrar, the policies of the credit union are not sufficient to protect the deposits of the credit union’s members, the Registrar may, in writing, direct the credit union to take measures to protect those deposits.

(4) Where—

- (a) the Registrar has sent a written directive under subregulation (3);
- (b) the credit union fails to take measures that protect the deposits of the credit union's members, or the measures taken are, in the opinion of the Registrar, insufficient;
- (c) the Registrar is of the opinion that the credit union has not sufficiently protected the deposits of its members,

the Registrar may direct the credit union to adopt and follow any policies that the Registrar may impose and the credit union shall adopt and follow those policies and the board of directors of the credit union shall ensure that the credit union adopt and follow those policies.

34. Interest on bad and doubtful loans

(1) For the purposes of section 199(2) of the Act, interest payments are not to be included in the credit union's income where the interest payment is with respect to a doubtful loan for which an allowance has been made under regulation 29.

(2) Subject to subregulation (3), a credit union may include in its income a maximum of 3 months accrued interest with respect to a loan.

(Amended by S.I. 72/2001)

35. Deposits

(1) Subject to this regulation the terms and conditions for the receipt of deposits by a registered society shall be set out in the bye-laws of the society.

(2) A credit union shall not establish and operate, without the approval of the Registrar, deposit accounts that permit funds in the account to be withdrawn or transferred by the depositor by means of—

- (a) a cheque,
- (b) another bill of exchange; or
- (c) any other negotiable instrument,

that allows the holder of the negotiable instrument to have payment on demand made to him or her from funds in the deposit.

(3) A credit union shall not, without the approval of the Registrar, accept funds on deposits for a term that is stipulated in any agreement between the credit union and the depositor to be longer than 5 years.

(4) Where a credit union accepts deposits for a term that is stipulated in an agreement between the credit union and a depositor, the credit union shall provide a receipt to the depositor showing—

- (a) the terms and conditions under which the funds are deposited by the depositor and accepted by the credit union;
- (b) the date on which the deposit matures;
- (c) the rate of interest to be paid by the credit union on funds deposited;
- (d) the time when interest is to be paid by the credit union; and
- (e) any conditions that the board has stipulated for withdrawals of funds by the depositor prior to the date the deposit matures.

(5) Where a person has deposited funds in an account with the credit union, the person is entitled to receive and the credit union shall provide a statement showing the transactions conducted by the person involving the person's account, the balance of funds in the account and any other information that the credit union considers important.

(6) The board may, in consultation with the Registrar, determine the form in which the statements required under subregulation (4) are given.

36. Maximum liability on deposits and loans

(1) In pursuance of section 117 of the Act, every registered society shall fix, at a General Meeting, the maximum liability the society may incur in loans or deposits from a member or a non-member.

(2) The maximum fixed by subregulation (1) is subject to the approval of the Registrar.

(3) A registered society shall not exceed the maximum approved by the Registrar under subregulation (2).

(4) The Registrar may, at any time, review the maximum approved under subregulation (2) and vary that maximum.

(5) A society shall not accept shares or ordinary deposits of more than \$10,000 in any one transaction from a member or non-member without an accepted declaration of the source of funds.

37. Bank account

(1) The directors of a registered society may open and maintain an account at any bank.

(2) Cheques drawn on an account mentioned in subregulation (1) may be signed by the treasurer of the society and a director.

(3) Despite subregulation (2), the board may authorise the manager or another senior employee to perform any of the duties of the treasurer, including the signing of cheques.

38. Branches

(1) In this regulation, "branch" means any office of a credit union where the credit union proposes to carry on business, including accepting deposits and operating a chequing service, separate and apart from its head office.

(2) Credit unions may open a branch for servicing their members, having first obtained the Registrar's approval in writing.

Schedule 1

(Regulation 3)

FORM 001

Cooperative Societies Act

To: The Registrar of Cooperative Societies

1. Application for registration of the under mentioned society under the Cooperative Societies Act is hereby made by the persons whose names and signatures appear hereunder.
2. The name of the society is:
3. The registered address of the society is:
4. The area of operation of the society is:
5. The objects of the society are as stated in the bye-laws.
6. The membership fee is:
7. The financial year will terminate on the ____ day of _____ in each year.
8. The liability of the members for the debts of the society is limited/unlimited.
9. The society was established on ____ day of _____, 20__ and at the date of this application there are _____ members in the society.
10. Enclosed herewith are 3 copies of the proposed bye-laws of the society.

11. The amount of \$ _____ is enclosed, being the fee for registration.

12. Particulars relating to the applicants are as follows:

FULL NAME	DATE OF BIRTH	OCCUPATION	ADDRESS	SIGNATURE
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13. The following persons have been appointed and have consented to act as provisional directors.

FULL NAME (PLEASE PRINT)	DATE OF BIRTH	OCCUPATION	ADDRESS	SIGNATURE

14. The full name and address of the Secretary are as follows:

Dated the _____ day of _____ in the year of Our Lord _____

_____.

Secretary

FORM 002

(Regulation 3)

Cooperative Societies Act

CERTIFICATE OF REGISTRATION

Certified that the application dated _____ made by _____ to be registered under section 6 of the Cooperative Societies Act as the _____ has been accepted and that the said society has been registered accordingly as No. ___ subject to the said Act and the regulations made thereunder.

FORM 003

(Regulation 3)

Cooperative Societies Act

CERTIFICATE OF CHANGE OF NAME

Certified that _____ under a directive given by the Registrar on the _____ day of _____ 20__ under section 12 of the Cooperative Societies Act has amended its bye-laws and will henceforth be known as _____ and that the said amendments have been duly registered.

Dated this _____ day of _____, 20__

Registrar of Cooperative Societies.

FORM 004

(Regulation 3)

Cooperative Societies Act

CERTIFICATE OF CHANGE OF NAME (Voluntary Change of Name)

Certified that _____ by a resolution passed in accordance with sections 10 and 48 of the Cooperative Societies Act___ and regulation 20 of the Cooperative Societies Regulations___ as amended by its bye-laws and will now be known as _____ and that the said amendments have been duly registered.

Dated this _____ day of _____, 20__

FORM 005

(Regulation 3)

**Cooperative Societies Act
NOTICE OF CHANGE OF DIRECTOR**

Name of Society:

Registration No:

On the _____ day of _____ 20__, the following persons ceased to be directors of the above-named society

FULL NAME	DATE OF BIRTH	OCCUPATION	ADDRESS	SIGNATURE
On the _____ day of _____ 20__, the following person(s) ceased to be director(s) of the society:				

FULL NAME	DATE OF BIRTH	OCCUPATION	ADDRESS	SIGNATURE
-----------	---------------	------------	---------	-----------

The directors of the society are:

FULL NAME	DATE OF BIRTH	OCCUPATION	ADDRESS	SIGNATURE
-----------	---------------	------------	---------	-----------

Certified correct this _____ day of _____, 20__

Signature

Officer

FORM 006

(Regulation 25)

**Cooperative Societies Act
INSTRUMENT OF CHARGE**

I, _____ of _____ hereinafter called ("the borrower"), being owner of the property described in the Schedule hereto and being a member of the _____ (hereinafter called ("the Society")), in consideration of the sum of \$ _____ lent to me this day by the Society, the receipt of which is hereby acknowledged, I do hereby create a charge on the property described in the Schedule attached, in favour of the Society as security for the repayment to the Society of the said sum of \$ _____ together with interest thereon at the rate of _____ % a year, by _____ instalments of \$ _____ as from the _____ day of _____, 20_____.

Now these presents witness that in consideration of the sum lent to the borrower as aforesaid the borrower hereby agrees that the charge hereby created is subject to the following covenants and conditions, that is to day:

(1) That he or she will repay the principal together with interest thereon on the _____ day of _____ 20_____.

(2) That he or she will not, at any time while any moneys remain owing hereunder, do or allow to be done any act whereby the property may become prejudicially affected

(3) That he or she is entitled to retain possession and use of the property unless he or she makes default

- (a) in the payment of any instalment or of the principal or interest thereon; or
- (b) in the observance or performance of any covenant or condition herein expressed in which case the Society may immediately upon such default or at any time thereafter, through an agent authorised by the Society in that behalf—
 - (i) seize and take possession of the property or any part thereof, and
 - (ii) sell the property so seized and taken possession of either at auction or by private treaty and in either case the property may be sold separately or together or in lots or for a lump sum payment or for payment by instalments as the Society may deem expedient.

(4) That upon a sale of the property or of any part thereof by the Society the following provision shall have effect—

- (a) the proceeds of sale shall be applied in accordance with sections 102 and 106 of the Cooperative Societies Act;
- (b) A purchaser of such property shall not be bound to inquire as to the propriety or regularity of the sale or shall be affected by any impropriety or irregularity of or at such sale;
- (c) The society shall not be answerable to the borrower in damages or otherwise for any loss occasioned to the borrower by the sale or for any act, neglect or default of the society or of its authorised agent.

SCHEDULE

(Add additional sheet if space allotted is too small)

Executed in quintuplicate at _____ this _____ day of _____, 20__.

Signature of Borrowing Member

Signed in our presence by the said _____ who is personally known to us.

President/Chairperson

Secretary

of the _____

NOTE: To be signed in quintuplicate in accordance with section 103(1) of the Cooperative Societies Act.

FORM 007

DETERMINATION AND ORDER IN THE MATTER OF A DISPUTE BETWEEN

_____ (Complainant)

AND

_____ (Respondent)

referred to me under section 187 of the Cooperative Societies Act

I, _____ Registrar of Cooperatives, do order and determine as follow:

(1) _____

(2) _____

(3) The costs and expenses of hearing and determining the dispute are \$__

(4) I direct that costs and expenses in the amount of \$_____ be paid by _____ to _____

Given under my hand this _____ day of _____, 20__.

Registrar of Cooperatives

NOTE: This Form is to be adapted in the case of an award by an arbitrator or arbitrators under section 187.

FORM 008

(Regulation 3)

Cooperative Societies Act CERTIFICATE OF DISSOLUTION

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, was this day dissolved under section _____ of the Cooperative Societies Act.

Given under my hand this _____ day of _____, 20__.

Registrar of Cooperative Societies

FORM 009

(Regulation 3)

Cooperative Societies Act
CERTIFICATE OF REVIVAL

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, has been revived under section _____ of the Cooperative Societies Act.

Given under my hand this _____ day of _____, 20____.

Registrar of Cooperative Societies

FORM 10

(Regulation 3)

Cooperative Societies Act
CERTIFICATE OF CONTINUANCE

Name of Society: _____

Registration No: _____

I hereby certify that the above-named Society, is this day continued as a registered society under section 241 of the Cooperative Societies Act.

Given under my hand this _____ day of _____, 20____.

Registrar of Cooperative Societies

Schedule 2

(Regulation 4)

FEES PAYABLE

ITEM	FEE
	\$
1. For application for registration by a Cooperative Society, other than a Junior Cooperative	25
2. For a Certificate of Registration:	
(a) for a credit union	300
(b) for any other registered society, other than a Junior Cooperative Society	100
3. For reservation of name.....	25
4. For change of name	25
5. For search	5
6. For restoring society's name to register:	
(a) Credit Union.....	100
(b) Other Cooperative Society	75
7. For the filing of the annual and special returns:	
(a) on the day that it is due	No fee
(b) for each day after the date it is due to be filed, a special filing fee of to a maximum of	5
	200
8. For A certificate of continuance.....	25
9. For a certificate of amendment of bye-laws.....	25
10. For a certificate of revival	25
11. For a certificate of dissolution.....	25
12. For an examination of any document.....	100
13. For photocopies of any document:	
(a) For the first page.....	2
(b) for each additional page	1
14. For certification of any document:	

(a) for the first page	2
(b) for each additional page	1
15. For a notice that is required to be published in the Gazette	the cost of placing the notice in the Gazette
16. For any certificate other than certificate of dissolution or certificate for which a fee is not provided.....	25
17. For filing any document unrelated to anything for which a fee is not provided.....	10

NOTE: The fees (other than those referred to in paragraphs 1 and 2) payable in respect of a Junior Cooperative Society shall be 20% of the fees payable by a registered society, other than a credit union.

Schedule 3

(Regulation 30(1))

Duration of Period of Overdue Loans	Percentage of Outstanding Loans Balance That is Deemed Loss Exposure
3 months but less than 6 months	25%
6 months but less than 9 months	50%
9 months but less than 1 year	75%
1 year or more	100%

Co-Operatives Societies (Appeals Tribunal) Regulations – Section 238

(Statutory Instrument 48/2003)

Statutory Instrument 48/2003 .. in force 10 June 2003

ARRANGEMENT OF REGULATIONS

PART 1 PRELIMINARY

1. Citation
2. Interpretation

PART 2 PROCEDURE AND MEETINGS OF TRIBUNAL

3. Procedure and meetings

PART 3 APPEALS

4. Application
5. Notice of Appeal
6. Record
7. Transmission of the record
8. Application for extension of time

PART 4 HEARING OF APPEALS

9. Constitution
10. Hearing by Tribunal
11. Powers of Tribunal
12. Decisions
13. Pending appeals

**CO-OPERATIVES SOCIETIES (APPEALS TRIBUNAL) REGULATIONS – SECTION
238**

Commencement [10 June 2003]

**PART 1
PRELIMINARY**

1. Citation

These Regulations may be cited as the Co-operative Societies (Appeals Tribunal) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Co-operative Societies Act;

“**Appellant**” means any—

- (a) Co-operative society;
- (b) member or former member of a Co-operative Society; or
- (c) any person who is aggrieved by a decision of the Registrar or Arbitrator;

“**Arbitrator**” means any person appointed by the Registrar for the purpose of hearing a dispute;

“**Chairperson**” means the Chairperson of the Tribunal;

“**member**” in relation to an appeal means a member of the Tribunal entitled to sit for the purpose of hearing and determining that appeal;

“**Minister**” means the Minister with responsibility for co-operatives;

“**Registrar**” means the Registrar for Co-operatives appointed under section 5 of the Act;

“**Secretary**” means Secretary to the Tribunal;

“**Tribunal**” means the Co-operative Societies Appeals Tribunal established under section 188 of the Act.

**PART 2
PROCEDURE AND MEETINGS OF TRIBUNAL**

3. Procedure and meetings

(1) The Tribunal shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the Chairperson may determine.

(2) The Chairperson may at any time call a special meeting of the Tribunal and shall call a special meeting within 4 days of a requisition for that purpose addressed to him or her by 2 members of the Tribunal.

(3) The Secretary to the Tribunal shall give to every member of the Tribunal notice of a meeting at least 72 hours before the time appointed for holding the meeting.

(4) The Chairperson shall preside at meetings of the Tribunal and if at any meeting the Chairperson is not present within 30 minutes of the time appointed for holding the meeting, the members present may choose one member among themselves to preside at that meeting.

(5) The decisions of the Tribunal shall be by a majority of votes.

(6) Minutes in the form the Chairperson may direct of each meeting shall be kept by the Secretary.

(7) The Chairperson shall keep notes of the meeting and the notes shall be as authoritative as the minutes kept by the Secretary.

(8) Subject to these Regulations, the Tribunal shall have power to regulate its own proceedings.

PART 3 APPEALS

4. Application

This Part shall apply to all appeals filed on or after the date on which these Regulations are made.

5. Notice of Appeal

(1) An appellant may appeal, by notice in writing, to the Tribunal within 14 days of the decision of the Registrar or Arbitrator.

(2) The notice of appeal referred to in subregulation (1) shall be signed by the Appellant and 6 copies of the notice of appeal shall be submitted to the Secretary.

(3) A notice of appeal shall be dated as of the day on which it is signed and shall state—

- (a) the name of the Appellant;
- (b) the Appellant's office, if any;
- (c) the date of the decision from which the Appellant desires to appeal;
- (d) the person or authority from whose decision the Appellant desires to appeal;
- (e) the date on which the Appellant received notice of the decision he or she desires to appeal;
- (f) the decision which the Appellant seeks from the Tribunal;
- (g) an address to which any notice or other document may be sent to the Appellant from the Tribunal; and
- (h) the reasons in detail for the appeal.

(4) A notice of appeal shall be in the form set out in Schedule 1.

(5) The Secretary shall publish in the Gazette an address where notice of appeal may be given under these Regulations.

(6) A notice of appeal shall be given to the Secretary either personally or by sending it by registered mail to the address published under subregulation (5).

6. Record

The Secretary shall as soon as possible after receiving a notice of appeal compile a record which shall consist of the—

- (a) notice of appeal;
- (b) notes of evidence;
- (c) relevant documents and exhibits if any;
- (d) reasons for the decision of the Registrar or Arbitrator.

7. Transmission of the record

(1) The Secretary shall, as soon as possible after compiling the record under regulation 6, send one copy to each of the following persons—

- (a) the Chairperson;
- (b) all other members of the Tribunal;
- (c) the Appellant; and
- (d) the Registrar or Arbitrator.

(2) The copy of the record to be sent to the Appellant and the Registrar or Arbitrator shall be sent either personally or by registered mail.

8. Application for extension of time

(1) The Tribunal may extend the time within which an appeal shall be brought under these Regulations.

(2) An application to extend the time within which an appeal shall be brought shall be in writing and the provisions relating to appeals shall, with the necessary modifications, apply to an application under this regulation as they apply to notices of appeal and to the proceedings in appeals.

(3) An application to extend the time within which an appeal shall be brought shall be in the form set out in Schedule 2.

(4) Where the Tribunal extends the time within which an appeal shall be brought, the application to extend the time shall be determined by the members of the Tribunal.

PART 4 HEARING OF APPEALS

9. Constitution

(1) A hearing by the Tribunal shall comprise the Chairperson and all the members of the Tribunal.

(2) At any hearing by the Tribunal, in the event of a split decision, the hearing shall be reconvened with all the members of which the Tribunal was comprised.

(3) Whenever the Chairperson sits on an appeal he or she shall preside at the hearing.

10. Hearing by Tribunal

(1) A hearing by the Tribunal shall take place at least 60 days after the date of the Registrar's or Arbitrator's decision.

(2) At least 7 days before the date fixed for the hearing of an appeal, the Secretary to the Tribunal shall by notice in writing advise the Appellant and the

Registrar or Arbitrator of the date on, and the place at which the appeal has been set down for hearing.

(3) A notice under subregulation (2) shall be given to the Appellant and the Registrar or Arbitrator either personally or by sending the notice by registered mail.

(4) At least 7 days before the hearing of the Tribunal, the Secretary shall, whenever practicable, cause the notice referred to under subregulation (2) to be published in the Gazette.

(5) At every hearing by the Tribunal the Appellant and the Registrar or Arbitrator shall be entitled to appear in person or by a representative.

(6) The hearing of an appeal by the Tribunal shall be in private.

(7) An appeal to the Tribunal shall be a review of the record.

11. Powers of Tribunal

(1) The Tribunal shall have power—

- (a) to require any person to produce any document which the Tribunal may consider necessary for the purpose of the appeal;
- (b) to summon to attend at the hearing of an appeal any person who in its opinion is or might be able to give evidence respecting the appeal;
- (c) where any person is summoned to examine him or her on oath;
- (d) to adjourn, strike out, dismiss or proceed with the hearing of an appeal where the Appellant or the Registrar or Arbitrator fails to appear;
- (e) to adjourn from time to time as the Tribunal sees fit;
- (f) to determine the procedure to be followed in an appeal.

12. Decisions

(1) Upon every hearing of an appeal, the Tribunal may affirm or set aside the decision appealed or may make any other decision which the Registrar or Arbitrator could have made.

(2) The Secretary shall, as soon as possible after the Tribunal has decided an appeal, send a copy of the decision to—

- (a) the Appellant;
- (b) the Registrar or Arbitrator.

(3) A copy of a decision under subregulation (2) shall be sent to the Appellant and the Registrar or Arbitrator either personally or by registered mail.

13. Pending appeals

The procedure to regulate all appeals pending before the Tribunal before the date on which these Regulations are made shall be as the members sitting for the purpose of hearing those appeals determine.

Schedule 1

(Regulation 4(4))

**SAINT LUCIA
BETWEEN:**

And

Appellant

Respondent

NOTICE OF APPEAL

Take notice that (1), a member of Cooperative Society/a person aggrieved by the decision of the Registrar/Arbitrator,

(2) being dissatisfied with the decision of the Registrar/Arbitrator dated 20 of which I received notice on the day of 20

(3) That

hereby appeals to the Cooperative Societies Appeals Tribunal for the reasons set out in paragraph 5 below and will at the hearing of the appeal seek a decision to the Tribunal that

(4)

Reasons for Appeal

(Insert **FULLY** here the reasons for the Appeal)

(a)

(b)

(c) etc.

All notices or other documents relating to this appeal may be sent to me at (5)

.....

Dated this day of 20

To: The Secretary

The Cooperative Societies Appeals Tribunal

Note:

(1) Name of appellant

(2) Office/occupation

(3) Insert substance of the decision appealed against

(4) State order sought from the Tribunal

(5) Address

Schedule 2

(Regulation 7(3))

SAINT LUCIA

BETWEEN:

Appellant

And

Respondent

APPLICATION TO EXTEND TIME WITHIN WHICH TO APPEAL

Take notice that (1), a member of Cooperative Society/a person affected by the decision of the Registrar/Arbitrator,

(2) intends to apply to the Cooperative Societies Appeals Tribunal to extend the time within which I may appeal against the decision of the Registrar/Arbitrator dated the day of 20 of which I received notice on the day of 20

(3) And further take Notice that the reasons for this application are as follows—

(a)

(b).....

(c)

(d) etc.

And further take notice that the reasons for which I desire to appeal against the said decision are as follows—

(4)

(b) And further take notice that the order I seek is

(c) etc.

All notices or other documents relating to this application may be sent to me at (5)

.....

Dated this day of 20

.....

Appellant

To: The Secretary
The Cooperative Societies Appeals Tribunal

Note:

- (1) Name of Appellant
 - (2) Occupation/office
 - (3) Insert reasons for being out of time
 - (4) Reasons for Appeal
 - (5) Addresses
-